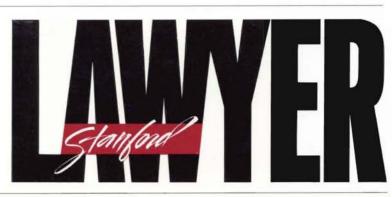
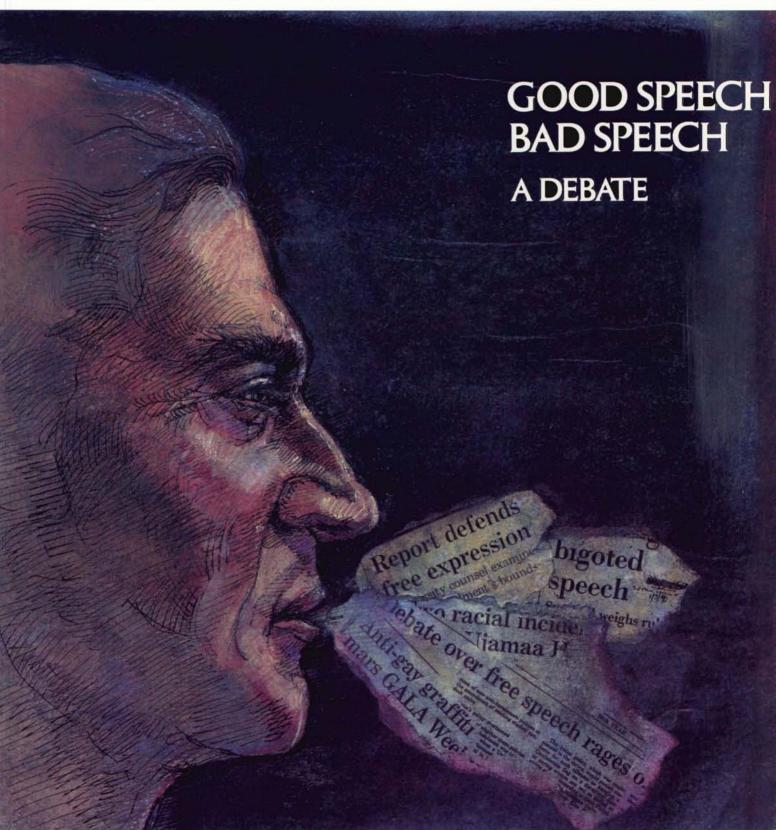
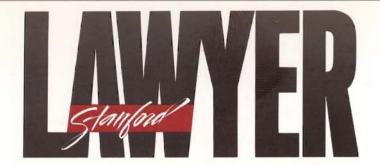
Lawyering Skills Hispanic Graduates Annual Report









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# From the DEAN



Paul Brest Richard E. Lang Professor and Dean

OW SHOULD LAWYERS acquire the variety of skills needed to practice law competently? For some years, the California Bar and the State's law schools have been engaged in an acrimonious and unproductive wrangle over this vexing question.

The dispute has followed a cyclical pattern. The Bar unilaterally proposes that applicants must have prior intensive training in certain lawyering skills. The law schools oppose the requirement on the grounds that it is poorly thought out, too expensive, and an intrusion on the schools' traditional autonomy to determine curriculum. The parties are then deadlocked for a while—until the Bar introduces a new proposal and starts the cycle once again. During my nearly three years as dean, I have seen and participated in three turns of this wheel.

Last fall, a small group of deans began working with representatives of the State Bar to break the cycle. The deans are Susan Westerberg Prager (AB '64, AM '67) of UCLA, Scott Bice of USC, Kenneth Held of La Verne, and myself. The Bar has been represented by Alan Rothenberg, its current president, and Robin Donoghue, chair of the Committee on Professional Standards and Admissions.

I'm pleased to be able to report some success, albeit mixed. To start with the bad news: In January the State Bar sent out for public comment yet another proposal for a pre-admissions lawyering skills requirement. The good news is that the Bar

also established a joint Commission on Lawyering Skills to study and make recommendations on the whole issue. The Commission will be composed equally of law school deans and Bar officials.

Let me outline what I think the main issues are and what I hope the Commission will accomplish.

THE BAR has an unquestionably legitimate interest in assuring the competence of those it licenses to practice in California. Although the bar exam tests quite well for analytic and writing skills, no satisfactory way has been found to test for other "lawyering skills," such as trial and appellate advocacy, negotiation, counseling, and interviewing. Moreover, while the graduates of Stanford and a few other law schools usually begin practice under the mentorship of experienced lawyers, this is neither required nor universal. Many new lawyersgraduates of ABA-accredited law schools as well as California's Stateaccredited and unaccredited schools begin serving clients with little or no supervision.

It is these considerations that underlie the Bar's most recent proposal, which would amend the California Business and Professional Code to require that applicants to the State Bar have completed a "professional skills training program" consisting of at least sixty hours of classroom and practical exercises covering all the skills mentioned above.

THE LAW SCHOOLS also have legitimate concerns. Some are essentially pedagogical.

For example, many educators believe that applied lawyering skills are learned most effectively in conjunction with practice—under the mentorship of experienced lawyers or through intensive seminars of the sort taught by the National Institute for Trial Advocacy—when the novice lawyer is

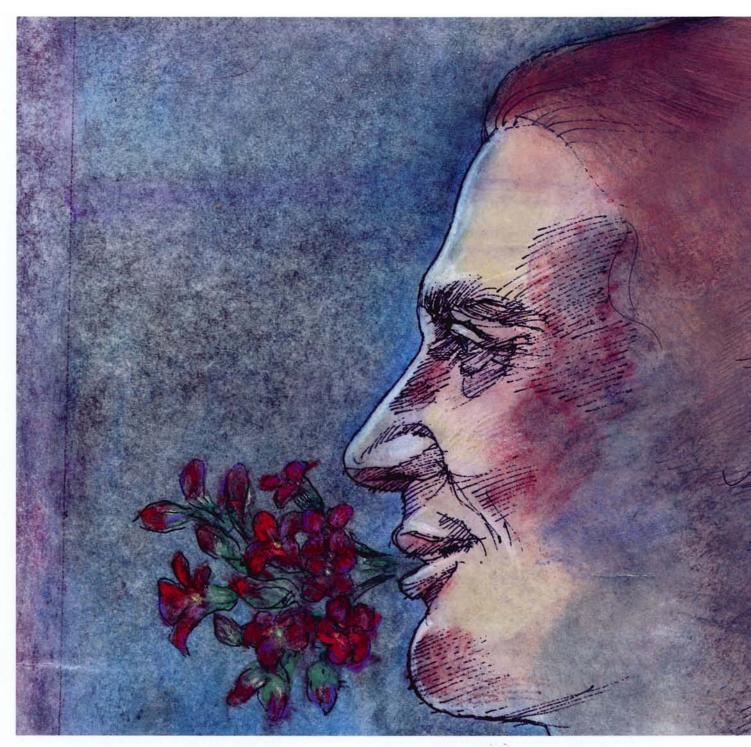
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able to hone those skills day after day in real-life situations. In this view, law school instruction properly emphasizes analytic, research, and writing skills, and the acquisition of doctrine and theory. While clinical instruction may serve an important role in this enterprise, practice-oriented skills training as such is best postponed until the lawyer actually begins practice.

A related consideration is that the faculties of law schools, especially those within research universities, are not particularly well qualified to teach lawyering skills. This is not a defect—our faculty members are highly qualified to teach analytical skills and doctrine, and also to pursue the other major mission of a research law school: the advancement and dissemination of legal knowledge through research and writing. But training in lawyering skills is not their forte.

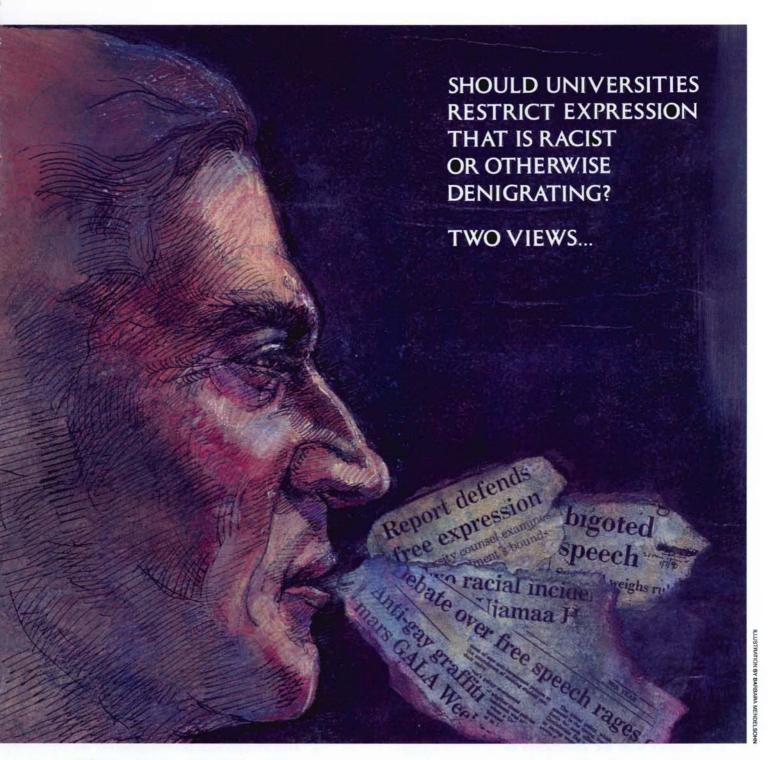
Law schools are also concerned that the State Bar's proposals, even though couched as admissions requirements, would in effect regulate the curriculum. Unlike the American Bar Association and the Association of American Law Schools, which accredit law schools throughout the nation, the State Bar has little expertise in legal education. Indeed, the history of its various lawyering skills proposals over the years raises doubts whether the Bar is sensitive either to their effects on the rest of the curriculum or to their fiscal consequences.

In addition, many out-of-state law schools whose graduates seek to practice in California are fearful of the extraterritorial impact of the Bar's proposals. And all the nationally accredited law schools are apprehensive that the State Bar's entry into this area will subject them to different and inconsistent requirements. The likelihood of multiple regulation is highlighted by the recent creation of an ABA Task Force on Law Schools and the Profes-

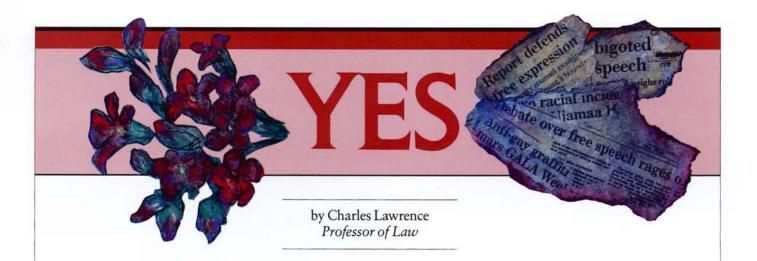


GOOD SPEECH





NE PERSON'S FREEDOM of expression may be another's verbal assault—a dilemma with First Amendment implications. Constitutional law experts Charles Lawrence and Gerald Gunther explore this in the following essays. Note that while the two professors take differing stands, both speak from experience as victims of the kind of "bad speech" at issue. Their arguments were initially framed in the context of an ongoing debate at Stanford University over whether and how the Fundamental Standard for student conduct should be amended. Several other Law School faculty members—including Dean Brest and Professors William Cohen, Thomas Grey, and Robert Rabin—have also contributed to the campus deliberations.



HAVE SPENT the better part of my life as a dissenter. As a high-school student, I was threatened with suspension for my refusal to participate in a civil-defense drill, and I have been a conspicuous consumer of my First Amendment liberties ever since. There are very strong reasons for protecting even speech that is racist. Perhaps the most important is that such protection reinforces our society's commitment to tolerance as a value. By protecting bad speech from government regulation, we will be forced to combat it as a community.

I have, however, a deeply felt apprehension about the resurgence of racial violence and the corresponding increase in the incidence of verbal and symbolic assault and harassment to which blacks and other traditionally excluded groups are subjected. I am troubled by the way the debate has been framed in response to the recent surge of racist incidents on college and university campuses and in response to some universities' attempts to regulate harassing speech. The problem has been framed as one in which the liberty of free speech is in conflict with the elimination of racism. I believe this has placed the bigot on the moral high ground and fanned the rising flames of racism.

Above all, I am troubled that we have not listened to the real victims—that we have shown so little understanding of their injury, and that we have abandoned those whose race, gender, or sexual orientation continues to make them

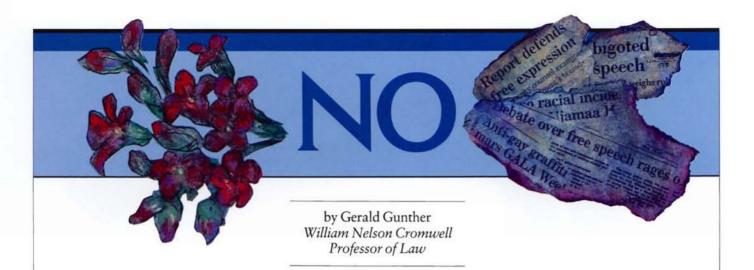


Professor Lawrence, who has been at Stanford since 1983, teaches constitutional law, education and law, and race relations. Known for his penetrating analyses of unconscious racism, he is the author (with Joel Dreyfuss) of The Bakke Case: The Politics of Inequality (1979) and numerous scholarly articles.

second-class citizens. It seems to me a very sad irony that the first instinct of civil libertarians has been to challenge even the smallest, most narrowly framed efforts by universities to provide black and other minority students with the protection the Constitution, in my opinion, guarantees them.

The landmark case of Brown v. Board of Education is not a case that we normally think of as a case about speech. But Brown can be broadly read as articulating the principle of equal citizenship. Brown held that segregated schools were inherently unequal because of the message that segregation conveyed: that black children were an untouchable caste, unfit to go to school with white children. If we understand the necessity of eliminating the system of signs and symbols that signal the inferiority of blacks, then we should hesitate before proclaiming that all racist speech that stops short of physical violence must be defended.

University officials who have formulated policies to respond to incidents of racial harassment have been characterized in the press as "thought police," even though such policies generally do nothing more than impose sanctions against intentional face-to-face insults. Racist speech that takes the form of face-to-face insults, catcalls, or other assaultive speech aimed at an individual or small group of persons falls directly within the "fighting words" exception



AM deeply troubled by current efforts—however well-intentioned—to place new limits on freedom of expression at this and other campuses. Such limits are not only incompatible with the mission and meaning of a university; they also send exactly the wrong message from academia to society as a whole. University campuses should exhibit greater, not less, freedom of expression than prevails in society at large.

Proponents of new limits argue that historic First Amendment rights must be balanced against "Stanford's commitment to the diversity of ideas and persons." Clearly, there is ample room and need for vigorous University action to combat racial and other discrimination. But curbing freedom of speech is the wrong way to do so. The proper answer to bad speech is usually more and better speech—not new laws, litigation, and repression.

Lest it be thought that I am insensitive to the pain imposed by expressions of racial or religious hatred, let me say that I have suffered that pain and empathize with others under similar verbal assault. My deep belief in the principles of the First Amendment arises in part from my own experiences.

I received my elementary education in a public school in a very small town in Nazi Germany. There I was subjected to vehement anti-Semitic remarks from my teacher, classmates and others—"Judensau" (Jew pig) was far from the harshest. I can assure you that they hurt.



Professor Gunther, one of the nation's foremost constitutional law scholars, has taught courses on freedom of speech at Columbia, Harvard, and for the past 28 years, at Stanford. Some 600 pages of his landmark casebook, Constitutional Law (11th ed., 1985) are devoted to First Amendment issues.

More generally, I lived in a country where ideological orthodoxy reigned and where the opportunity for dissent was severely limited.

The lesson I have drawn from my childhood in Nazi Germany and my happier adult life in this country is the need to walk the sometimes difficult path of denouncing the bigots' hateful ideas with all my power, yet at the same time challenging any community's attempt to suppress hateful ideas by force of law.

Obviously, given my own experience, I do not quarrel with the claim that words can do harm. But I firmly deny that a showing of harm suffices to deny First Amendment protection, and I insist on the elementary First Amendment principle that our Constitution usually protects even offensive, harmful expression.

That is why—at the risk of being thought callous or doctrinaire—I feel compelled to speak out against the attempt by some members of the Stanford community to enlarge the area of forbidden speech under the Fundamental Standard. Such proposals, in my view, seriously undervalue the First Amendment and far too readily endanger its precious content. Limitations on free expression beyond those established by law should be eschewed in an institution committed to diversity and the First Amendment.<sup>1</sup>

In explaining my position, I will avoid extensive legal arguments. Instead, I



to First Amendment protection. The Supreme Court has held in *Chaplinsky v. New Hampshire* that words which "by their very utterance inflict injury or tend to incite an immediate breach of the peace" are not protected by the First Amendment.

If the purpose of the First Amendment is to foster the greatest amount of speech, racial insults disserve that purpose. Assaultive racist speech functions as a preemptive strike. The invective is experienced as a blow, not as a proffered idea. And once the blow is struck, a dialogue is unlikely to follow. Racial insults are particularly undeserving of First Amendment protection, because the perpetrator's intention is not to discover truth or initiate dialogué but to injure the victim. In most situations, members of minority groups realize that they are likely to lose if they fight back, and are forced to remain silent and submissive.

Courts have held that offensive speech may not be regulated in public forums (such as streets, where the listener may avoid the speech by moving on). But the regulation of otherwise protected speech has been permitted when the speech invades the privacy of the unwilling listener's home, or when the unwilling listener cannot avoid the speech. Racist posters, fliers, and graffiti in dormitories, bathrooms, and other common living spaces would seem to fall within the reasoning of these cases. Minority students should not be required to remain in their rooms in order to avoid racial

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insult. Minimally, they should find a safe haven in their dorms and in all other common rooms that are a part of their daily routine.

I would also argue that the university's responsibility for ensuring that these students receive an equal educational opportunity provides a compelling justification for regulations that ensure them safe passage in all common areas. A minority student should not have to risk becoming the target of racially assaulting speech every time he or she chooses to walk across campus. Regulating vilifying speech that cannot be anticipated or avoided need not preclude announced speeches and rallies-situations that would give minority-group members and their allies the opportunity to organize counterdemonstrations or avoid the speech altogether.

THE MOST commonly advanced argument against the regulation of racist speech proceeds something like this: We recognize that minority groups suffer pain and injury as the result of racist speech, but we must allow this hate mongering for the benefit of society as a whole. Freedom of speech is the lifeblood of our democratic system. It is especially important for minorities, because often it is their only vehicle for rallying support for the redress of their grievances. It will be impossible to formulate a prohibition so precise that it will prevent the racist speech you want to



want to speak from the heart, on the basis of my own background and of my understanding of First Amendment principles—principles supported by an ever larger number of scholars and Supreme Court justices, especially since the days of the Warren Court.

Among the core principles is that any official effort to suppress expression must be viewed with the greatest skepticism and suspicion. Only in very narrow, urgent circumstances should government or similar institutions be permitted to inhibit speech. True, there are certain categories of speech that may be prohibited; but the number and scope of these categories has steadily shrunk over the last fifty years. Face-to-face insults are one such category; incitement to immediate illegal action is another. But opinions expressed in debates and arguments about a wide range of political and social issues should not be suppressed simply because of disagreement with those views, with the content of the expression.

Similarly, speech should not and cannot be banned simply because it is "offensive" to substantial parts or a majority of a community. The refusal to suppress offensive speech is one of the most difficult obligations the free speech principle imposes upon all of us; yet it is also one of the First Amendment's greatest glories—indeed it is a central test of a community's commitment to free speech.

The Supreme Court's 1989 decision to allow flag-burning as a form of political

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protest, in Texas v. Johnson, warrants careful pondering by all those who continue to advocate campus restraints on "racist speech." As Justice Brennan's majority opinion in Johnson reminded, "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." In refusing to place flagburning outside the First Amendment, moreover, the Johnson majority insisted (in words especially apt for the "racist speech" debate): "The First Amendment does not guarantee that other concepts virtually sacred to our Nation as a whole—such as the principle that discrimination on the basis of race is odious and destructive—will go unquestioned in the marketplace of ideas. We decline, therefore, to create for the flag an exception to the joust of principles protected by the First Amendment." (Italics added.)

CAMPUS PROPONENTS of restricting offensive speech are currently relying for justification on the Supreme Court's allegedly repeated reiteration that "fighting words" constitute an exception to the First Amendment. Such an exception has indeed been recognized in a number of lower court cases. However, there has only been *one* case in the history of the Supreme Court in which a majority of the Justices has ever found a



# PAYING FOR AND

HIS IS NOT an article about AIDS; it is an article about the American system of financing health care. Few Americans will contract AIDS, but all of us, from our births to our deaths, rely on the health care financing system. That system, like the human body itself, is an intricate and delicately balanced organism. HIV (the virus that causes AIDS) interferes with both. But while we cannot legislate our physiology, we should be able to control our health care system.

The American health care financing system-the most costly in the world—is the product of a complex and constantly changing interplay of law, economics, and culture. That interplay fascinates me. Since 1987 I have been studying the effects of the HIV epidemic on this system.1 This topic has been satisfying in part because of the immediate relevance of the questions for public policy. Beyond that, it has served as a useful case study of our health care financing system under stress. The precise challenge presented by HIV may not be repeated, but the weaknesses it highlights will remain, like the San Andreas fault (an irresistible simile right now), ready to break when put by Henry T. Greely Associate Professor of Law

The U.S. can
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under enough strain.

In this article I will briefly discuss the estimated medical costs of treating HIV infection, the effects of those costs on the health care financing system, and their probable political consequences. Of course, treatment costs are not the most important costs of the HIV epidemic—the

human and economic costs of the mostly young lives cut short dwarf them—but it is medical costs that affect the health care financing system and are thus my focus.

The news about treatment costs is not all bad. Total medical care costs associated with HIV, although significant, will probably not exceed \$8.25 billion—a little over one percent of our expected health care expenses in 1992 (the current limit of government AIDS projections). The amount of these HIV costs will not break the system, but, unless we act quickly, the distribution of those costs may damage it severely.

But first, some background on our current system for financing health care.

#### A Fragmented System

There are five major direct financing sources for health care in the United States: private health insurance, Medicaid, Medicare, patients, and (usually involuntarily) hospitals and doctors. Each plays a role in financing HIV-related care.

Private health insurance covers about 155 million Americans. Although 10 to 15 million people are

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covered under individually underwritten insurance, the vast majority are covered by group plans, almost always through an employer. In the past, employers usually purchased insurance for their employees from commercial insurance companies or the "Blues" (Blue Cross and Blue Shield). Increasingly, legal and economic advantages, not all of them foreseen, have led employers to selfinsure-that is, to pay their employees' bills themselves without sharing the risks with an insurer. Today, employers covering an estimated 60 percent of those with employment-related health coverage choose to self-insure. A second new aspect of employment-related health coverage is that, under recent federal legislation known as COBRA, employers must generally offer those who lose their coverage the chance to buy reasonably priced "continua-

tion" coverage, usually for 18 months after termination.

Medicaid is a joint federal-state program. The federal government sets guidelines and provides between 50 and 80 percent of the funding for a state's plan; the state decides how to implement the program. To be eligible for Medicaid, an applicant must fall within a protected category under federal law, encompassing primarily the aged, the disabled, and members of families with dependent children. In addition, the applicant's income and assets must fall below state-set levels. These limitations mean that Medicaid covers fewer than 40 percent of the nation's poor. AIDS patients, however, are presumed disabled from the time of their diagnosis





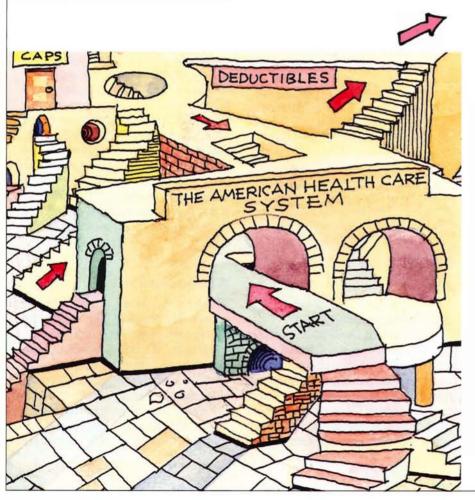




and so become eligible for Medicaid as soon as they meet the income and assets tests. States vary widely in the services, particularly drugs, covered by Medicaid.

Medicare, on the other hand, is financed totally by the federal government, through payroll taxes, special premiums, and general revenues. Although Medicare's chief beneficiaries are the elderly, it also covers people who have been legally "disabled" for at least two years. Thus far, few AIDS patients have been over 65 or have survived more than two years from diagnosis, so Medicare has borne only a small share of AIDS costs.

About 35 million Americans are not covered by any private insurance, Medicare, or Medicaid, and therefore are expected to pay all their own health costs. And even people covered by private insurance or Medicare



will still pay a substantial portion of their hospital and physician bills through deductibles, copayments, drug charges, and premiums. Overall, in 1987 patients paid directly for just over ten percent of their own hospital care and more than a quarter of their doctors' bills.

Finally, although doctors and hospitals prefer to be paid for their services, they cannot always find someone willing and able to pay in full. Nor can they reject uninsured patients at the hospital door who need emergency care. Unless health care providers can shift the costs of that care somewhere else, they will in effect subsidize care for those with inadequate coverage.

How do the HIV-infected fit into this financing system? Before being diagnosed with AIDS, people infected with HIV are generally covered by private insurance or are not covered at all. Although many of those infected as a result of intravenous drug use are poor, few meet the other requirements for Medicaid. And because,





before diagnosis with AIDS, they may not need emergency treatment, few may benefit from uncompensated care.

After AIDS is diagnosed, the situation changes. Patients who were employed and insured often will have to stop working. They can then buy continuation coverage and remain covered for another 18 months. If they don't buy this coverage, or, in any event, at the end of the continuation period, they will have to "spend down" their own assets until they have become sufficiently poor to qualify for Medicaid (which in most states is poor indeed). If they survive 24 months from diagnosis, they may become eligible for Medicare coverage.

Patients who were not insured at the time of diagnosis move immediately into the "spend down" period. They become eligible for Medicaid as soon as they meet their state's income and asset levels.

For both initially insured and uninsured patients, during the "spend down" and Medicaid stages, hospitals and doctors will carry much of the cost of AIDS care as a result of unpaid bills and woefully inadequate Medicaid reimbursement.

### Tallying the Bill

Everything about HIV infection is controversial, including estimates of its spread and its costs. We do know that more than 100,000 Americans have been diagnosed with AIDS since 1981; more than 50,000 of them have died. The future caseload is not as clear. The most recent projection by the Centers for Disease Control (CDC)



examined AIDS cases through 1992, with a medium-level estimate that 172,000 AIDS patients would be alive for some part of 1992. Although there is increasing evidence for a less dismal forecast, I will use that CDC projection for these estimates.<sup>3</sup>

Estimates of the lifetime costs of treating AIDS have ranged from \$27,000 to about \$147,000 per patient, with the more recent studies near the lower end of the range. I have followed several of those studies in estimating the average calendar year costs per patient at about \$34,200 (in 1992 dollars).

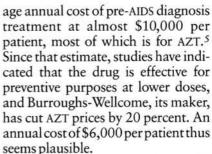
For 1992, therefore, my best guess of total medical care costs for treating patients diagnosed with AIDS is about \$5.85 billion. The uncertainties surrounding the disease and its treatments make this estimate somewhat speculative, but it is unlikely that it will prove low.

The costs of *pre*-AIDS treatment are considerably less certain. Exciting recent developments have made this phase of treatment both more important and potentially more expensive. Although my work thus far has concerned the costs of treating those

diagnosed with AIDS, I will try at least to suggest the likely financial effects of pre-AIDS treatment.

In August 1989 the National Institutes of Health announced the results of two studies showing that treating HIV-infected patients who have no symptoms or mild symptoms with AZT (azidothymidine, also known as zidovudine) significantly delayed the progression to AIDS, allowing those infected more years of life. But those years have a price. The most thorough estimate puts the aver-





But how many such patients will there be? The official CDC projection is that 1.0 to 1.5 million Americans are infected with HIV, but analysts increasingly suspect the CDC's projection may be too high, with some arguing for a total of 500,000 to 600,000.6 Not all infected people will receive pre-AIDS treatment. Many people will not know that they are infected; others (particularly intravenous drug users) may be unlikely to participate in a rigorous treatment regime. Some, depending on the financing system's response, may not be treated because they cannot afford it.

Assume, then, that an aggressive program of pre-AIDS treatment reached 400,000 HIV-infected people in 1992: The cost would be \$2.4 billion. (The net cost, however, should be lower: By keeping people healthier longer, pre-AIDS treatment should reduce the number of people





Seven Hispanic graduates tell how they came to Stanford, what it was like here, and where they are now

HE EFFORT, begun some twenty years ago, to broaden ethnic diversity at Stanford Law School has become increasingly successful: Students from racial and ethnic minorities now make up nearly one-quarter of each entering class.

The largest contingent is Hispanic—Mexican-Americans or Chicanos, and students of other Central or South American, Cuban, or Puerto Rican backgrounds. Taken together, 64 men and women of Hispanic origin are currently enrolled as J.D. candidates, 23 of



them in the entering class. Stanford Law graduates identified as Hispanic or Latino (a term preferred by some) now number about 200.<sup>2</sup>

Credit for these figures belongs only in part to Stanford's recruitment efforts. Without the student activism that the Civil Rights era ushered in, the first institutional push to recruit Hispanics might have been slower in coming. Nonetheless, Hispanic presence at the Law School is virtually certain to continue growing along with the increase in Hispanics in the population at large.<sup>3</sup>

by Jo Carrillo Graduate Fellow (JSD '91) I was asked by *Stanford Lawyer* to talk with a few of the School's Hispanic graduates who have been out of school long enough to have some perspective on their careers, as well as on their experiences getting there. Not being a scientist, I naturally conducted a very unscientific survey: I looked for one or two representatives from each of the past four decades of Hispanic presence at Stanford Law School.<sup>4</sup>

The seven interviewees, selected more or less at random, illustrate a range of backgrounds and career choices. I hope that the following conversations will reveal the people behind the statistics. It is these individuals, and others of similar courage and accomplishment, 5 who make up the history of Hispanic law students at Stanford.

First, though, the big picture.



### MILES TO GO



THE SWELLING POOL of legally trained Hispanics from Stanford and other schools has yet to translate into significant representation in the elite circles of the legal profession.

Linda E. Dávila '87 addressed this issue in a Stanford Law Review note detailing a 1986 survey of both Hispanic and non-Hispanic Stanford graduates working in corporate law firms.<sup>6</sup> One major obstacle to career advancement cited by Hispanic respondents was "the presumption that Hispanics are not qualified," reported Dávila. Law firms need to make a concerted effort to overcome such biases, and thus broaden access to all levels of their organizations. "A racially balanced profession," Dávila observed, "will benefit not only Hispanic attorneys but the public interest as a whole by making lawyers more responsive to diverse legal needs."

Imbalances also exist on law school faculties. A nationwide survey during the 1986-87 academic year turned up only 33 Hispanic law professors. Of those 33, only 14 had tenure.<sup>7</sup>

"It is distressing and demoralizing," says Robert Garcia '78, who is the sole Hispanic law professor at UCLA. "Less than five law schools in the country have more than one Latino on the faculty. We

can identify each other as 'the one at Minnesota,' 'the one at UCLA,' or 'the one at Houston.'"

Garcia was gratified, during a recent visit to Stanford Law School, to find a Latino teaching contingent of five.<sup>8</sup> "Even though only two are tenured, it's very moving to have that many Latinos on one faculty," he observed. "It means we're moving toward a critical mass among professors as well as students."

Despite the continuing reality of low Hispanic representation in the more powerful sectors of the legal profession, all the graduates I talked with believe that the Hispanic community is moving into the American mainstream. They also agree that whether the institution to be integrated is an elementary school or an elite, private club, numbers alone are not enough. Interactive pluralism is equally important: True integration means, in part, that institutions create and maintain environments in which minority members are not simply present, but welcome.

Today, I am happy to report, Stanford has added to its goal of numerical diversity the vision of a more interactive and multiracial community—one where the past and present contributions of racial and ethnic minority groups are visible and valued.

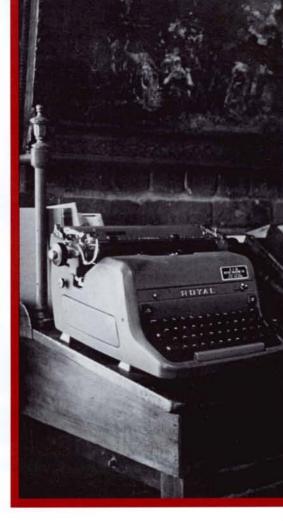
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#### EARLY DECADES: A HARDY FEW



NO ONE KNOWS just when the first Hispanic student entered Stanford Law School. Class lists as far back as the 1930s show an occasional Spanish surname. Thus, the history of Stanford Law Hispanics begins, not suddenly in the 1960s, when conscious efforts to increase diversity were launched, but gradually, over the previous decades.

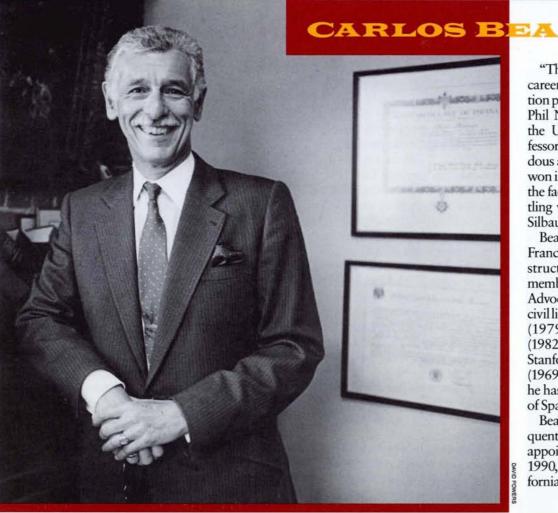
Carlos Bea '58—the sole Hispanic in his class and, for two years, in the Law School—was one of the precursors. Born in the Basque region of Spain and brought up mainly in the United States, Bea was legally a citizen of Cuba. "My father was born in Cuba when it was still a Spanish colony," he explains. "We came to the U.S. when I was five and lived in California except for some years during World War II."



Bea started law school during his fourth year as a Stanford undergraduate (AB'56) under the then-common "three-and-three" program. "The political philosophy of the School—and I think of the country in those days—was generally that America was a great melting pot where people came from different traditions and cultures to become 'Americans,'" Bea observed. "Immigrants were supposed to lose their ethnicity, to some extent. The push was away from hyphenated Americans.

"In grade school, a teacher suggested that I change my name from Carlos to Charles. But not at Stanford. Everyone called me Carlos; they respected my character.

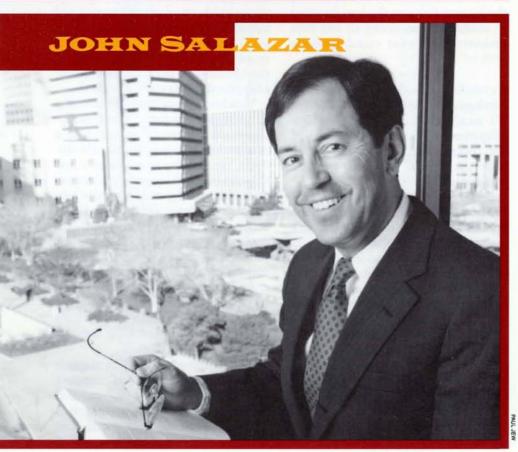
"The primary reason that I stayed at Stanford for law school was basketball," Bea continued. "I was on the Cuban Olympic team in 1952. In '53, '54, and '55—my first year of law school—I played for Stanford, eventually making the starting five. I was the smallest center in the Pacific Coast Conference in those days at 6'4".



"Through most of my law school career, I was also involved in a deportation proceeding. Dean Spaeth, Professor Phil Neal-who later became dean at the University of Chicago-and Professor Herbert Packer gave me a tremendous amount of support. When I finally won in 1958, I threw a party, and a lot of the faculty came. I remember arm wrestling with the Associate Dean, Preston Silbaugh."

Bea went into private practice in San Francisco, where he specialized in construction and business litigation. A member of the American Board of Trial Advocates, he has taught a seminar in civil litigation advocacy at both Hastings (1979-82, 1984-85) and Stanford (1982-83). Bea also served two terms on Stanford Law School's Board of Visitors (1969-72 and 1983-86). And since 1980, he has served as Honorary Vice-Consul of Spain in San Francisco.

Bea's latest news-announced subsequent to our interview-is a judicial appointment. Sworn in on January 23, 1990, he sits on the bench of the California Superior Court in San Francisco.



### THE 1960s: TURNING POINT

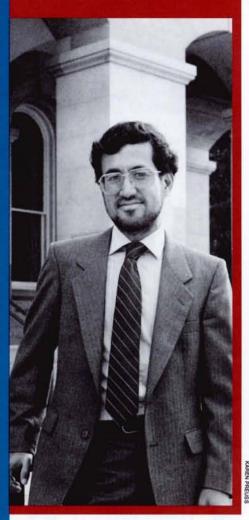


JOHN SALAZAR, now a partner at one of New Mexico's largest firms - Rodey, Dickason, Sloan, Akin & Robbgraduated from the School in 1968. "I was one of a very few Hispanic students," he says. "Yet my impression was that we all did fine."

Salazar attributes his success at Stanford in part to the fact that he grew up in New Mexico. "I think that the New Mexican experience is different from, say, the Texas or California experience. Our ancestors were in the Rio Grande Valley before the Pilgrims landed at Plymouth Rock."

Salazar's role model as a young boy was his uncle, attorney Tibo Chavez. Somewhat of a folk hero in New Mexico, Chavez was a practicing lawyer who went on to serve as a state senator, lieutenant governor, and then state district court judge. "I was inspired by the contribution that I saw Tibo make," says Salazar, "and I realized that his being a lawyer made him more effective

### JORGE CARRILLO



in raising the issues that were important to our community."

Despite his early exposure to the legal world, Salazar's first impression of Stanford Law School was intimidating. "I was insecure about my preparation, and insecurity has a way of sticking with you. I remember meeting my fellow students: the kinds of schools they had graduated from; the kinds of backgrounds and experience they brought with them; the writing they had done before hitting law schoolvery, very impressive. And, at that time, the professors used the Socratic method. They weren't gentle with anyone who wasn't prepared; nor were they mean-but class was no nonsense."

As with most first-year law students, Salazar's early insecurity eased into success, and he went on to become the Rodey firm's first Hispanic attorney. "My practice primarily involves real estate," he explains. "I'm particularly active in the development aspects—

which means that we start with a piece of land, purchase it, get it annexed, get it zoned, get it developed, and perhaps work with leases or possibly a sale. I also do real estate litigation work.

"I like the action in private firms," he continued. "Clients expect a quick turnaround; you see things happen. It's exciting, fun, and rewarding to see a project through to completion. If someone buys a piece of property for a building, I help with the transaction and, one day—there's a building."

Looking back on his Stanford days, Salazar says: "The Hispanic students didn't have a viable organization; we didn't get together to talk about issues that affected us as Hispanics. And," he recalls, "I couldn't help but notice the fact that there were no Hispanics, Blacks or women on the faculty. I hoped that one day there would be more of a mix. I'm glad to hear that the Law School is moving in that direction."

Salazar remembers the mid-sixties as "business as usual" at the Law School. "Even during the initial stages of the Civil Rights movement, the School was on an even keel. As far as I could tell, the bottom line was the law: learning it; studying it; analyzing it; and then understanding what could be done with it."

BYTHE END of the decade, however, the stirrings could be felt. Annie Gutierrez '71 recalls that, in 1968, "The few Hispanic students in colleges around the country began to communicate with each other about issues that affected them as Hispanics."

Gutierrez, with fellow student Luis Nogales '69 (now a member of the Stanford Board of Trustees), started a chapter of La Raza Law Students at Stanford, and then attended the meeting at which the national La Raza Law Students association was formed. Later that year, Gutierrez and Nogales started a chapter of MECHA (Movimiento Estudiantil Chicano de Aztlan) at Stanford University.

"Luis and I wanted to increase the number of Hispanic students, faculty and administration university-wide," explained Gutierrez, "but we didn't want to use disruptive tactics as students were doing at other schools. We didn't think that was the way to approach things at Stanford. We carried briefcases instead of banners, and used statistics instead of sit-ins."

The two students started by making a broad study of the justice system in California. "We wanted to illustrate that there was a large Hispanic population that needed legal services," said Gutierrez. "We compared the number of Hispanics involved in the system—for example, those who were small claims litigants, those who were incarcerated, etc.—with the number of Hispanic professionals in the system—judges, lawyers, interpreters, etc." These statistics were the basis of a position paper directed to the Law School.

Gutierrez and Nogales went on to gather statistics on the general status of Hispanics in California and across the country, resulting in position papers to other Stanford departments concerning the lack of Hispanic professionals in their areas of study. "Our goal was to persuade Stanford administrators that a Hispanic recruitment program was in order," explained Gutierrez. "President Lyman started an advisory committee made up of administration and faculty to direct the program, and Luis and I became student members. As a result of more active recruitment on the University's part, the number of Hispanic students started to climb.

"Academic support was the next step to increased Hispanic enrollment,' continued Gutierrez. "So, we set up a monitoring program: We talked to students, tutored them, mediated a few disputes between Hispanic and majority students, and generally tried to help Hispanic students acclimate to life at Stanford. In those days many Hispanic students would arrive wearing their very best clothes - clothes that, to the majority students, were clearly out of style—and, sadly, the Hispanics would be met by sneers and laughter. There was culture shock, and it affected both the Hispanic students and the majority students.

"During law school, I spent as much time in recruitment and support activities as I did studying," recalled Gutierrez, who went to a segregated school through the fifth grade. The daughter of a Basque sheep farmer in California's Imperial Valley, she says: "I saw a lot of discrimination growing up. Skin color alone allowed me to avoid some of it, but the minute I spoke Spanish, I encountered prejudice."

Gutierrez says that until late in high school, "It never occurred to me that I would do anything but take over the farm. No one in my entire family had ever graduated from high school. The fact that I went to college was a fluke. A high school teacher told me, 'You have to go to college.' I said that my folks wouldn't understand. So my teacher visited my father. From that point on, there was no question about my future. I graduated from Pomona College in 1960 with a B.A., and from Claremont Graduate School in 1961 with an M.A. in economics and international relations.

"By 1968, when I arrived at Stanford, I was a single mother—my husband had died of multiple sclerosis. I didn't qualify for married student housing because I wasn't 'married,' and many landlords in the area didn't allow children. So for a month and a half into my first semester, I lived with Professors Michael Wald and Wayne Barnett and their families. Gutierrez ultimately became the first single parent authorized to live in married student housing.

Gutierrez's activism continued on after law school. She returned to Imperial County to establish a plaintiff's civil rights practice and went on to serve as the first Executive Secretary of the California Agriculture Labor Relations Board, Associate Director for Justice and Civil Rights Issues on President Carter's Domestic Policy Staff, and the Mexico City District Director of U.S. Immigration for Mexico, Central and South America.

Gutierrez presently maintains a trial consulting practice based in San Diego. "I enjoy trial work best of all," she said. "I now take cases from other attorneys, when it's clear that they are going to trial or arbitration. Actually, for the past two years, I have been practicing law only half the time—the other half I travel as a field manager for the Foundation for Field Research." When interviewed, Gutierrez was about to leave for Australia, where a grant recipient is studying the fertilization of

nutmeg trees. Other projects she oversees involve research on the textiles found wrapped around Peruvian mummies, endangered species (the quetzal bird and the leatherback turtle) in Central America, the origins of the Spanish clay used to make the pots on Columbus's ships, and the excavation of an ancient city in Ghana.

Though focused on public interest law in her own practice, Gutierrez believes that "Hispanic students should be taking corporate law, tax, antitrust-all those subjects that majority Stanford law students take. Those courses are necessary for people who wish to work in public interest law, because if we want to make changes then we have to see how the system works. All Hispanics should not feel obliged to work as poverty lawyers or 'in the community.' We can make a contribution in corporate law firms as well. We've got to encourage each other to work at all levels of the legal profession. That's how true change comes about."



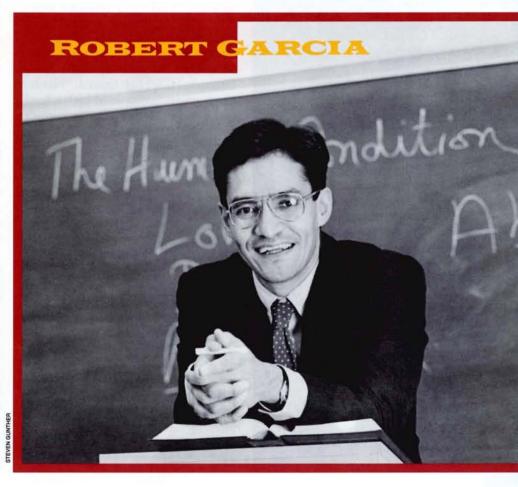
### THE 1970s: A SUBSTANTIAL PRESENCE



JORGE CARRILLO '75, like Gutierrez, served with the California state Agriculture Labor Relations Board for a time, in his case as a member of the Board. He is currently an administrative law judge for the Unemployment Insurance Appeals Board in Sacramento. A Chicano who as a youngster labored in the fields of California's Central Valley, Carrillo brings to his judicial work a depth of experience.

"My family was definitely poor," he explains. "I have two brothers, and during the summers we'd all work as a family in the agricultural areas around Fresno. Every fall, we'd go back to San Diego for school. By the time I graduated from high school, I had worked all sorts of crops—figs, peaches, apricots, garlic.

"I grew up very much segregated from Anglo society," he said. "We



didn't interact with the growers or their families. I felt we were living in two different worlds. The same in school—I didn't interact with white middle-class kids, and they didn't interact with me. Whether it was my doing or theirs, I don't know. But at some point, I made a more or less conscious decision that I could live in my own world, and they could live in theirs.

"To a large extent, these feelings extended into college and law school. I studied and socialized with the other Chicano students. There were some who weren't as inhibited in getting to know Anglo students, and there were some Anglo students who were friends with Chicano students, but there was a degree of self-imposed segregation at the law school in the mid-seventies. For me, it took a fairly thick skin to make it from Fresno to Stanford Law School.

"My father was my role model," Carrillo continued. "He was born and raised in Colorado, and he joined the Army in World War II. After the war, he settled in California. Since he had a good command of English, he was the one in our extended family who communicated with the growers. And, because of his experiences and abilities, he really inspired us. My mother's support and encouragement were equally important.

"When I was a junior in high school, my older brother was accepted to the University of California at San Diego. Then my next older brother was. That's when I started seriously thinking about college."

Judge Carrillo concluded: "It's not uncommon for people in the majority to get the idea that if one minority student can 'make it,' they all can. Getting into, and then through, college seems like a simple question of desire. But that reasoning overlooks what it takes for a student from my background to get to a school like Stanford. There are a lot of Chicano students with plenty of desire who don't make it that far. I was one of the lucky ones."

ROBERT GARCIA '78 arrived at Stanford by a different route. Originally from Guatemala, he moved with his family to New York at the age of 4 and to Los Angeles at 6, where he grew up and went to Granada Hills High School. "Neither of my parents completed high school, and I'm the only one in my immediate family to graduate from college," he says.

A Stanford undergraduate (BA '74) as well as law student, Garcia recalls: "In the mid-seventies, many majority students communicated their resentment over the presence of Latinos and Blacks. They seemed to feel that we did not deserve to be at Stanford, and that we were taking the places of their friends who had not been admitted because we were.

As a law student, Garcia distinguished himself by, among other things, becoming a member of the Stanford Law Review Board of Editors. "Several professors had a great impact on me," he continued. "Tony Amsterdam was the best teacher I've ever had—everything I've done as a lawyer can be traced back to something I learned from him. Professor Miguel Méndez, who arrived at Stanford dur-

ing my third year, was also a big help. He encouraged me to think about teaching."

Before joining the UCLA faculty in 1987, however, Garcia gained broad experience through a judicial clerkship, three years of private practice doing international law with Donovan, Leisure, Newton & Irvine in New York City, and then four more as an Assistant United States Attorney for the Southern District of New York. Garcia also worked as a cooperating attorney with the NAACP Legal Defense Fund, Inc., representing death row inmates.

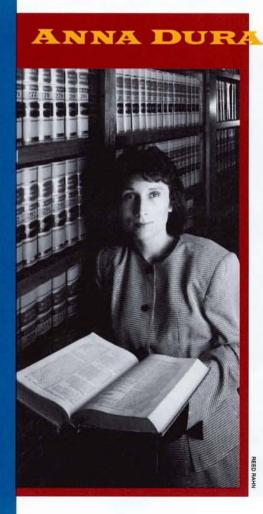
"Today I teach criminal law, evidence, criminal procedure, and a seminar on law and computers," he says. "My research interests are artificial intelligence, expert systems—computer programs that can analyze legal issues—and the use of computers in complex criminal investigations."

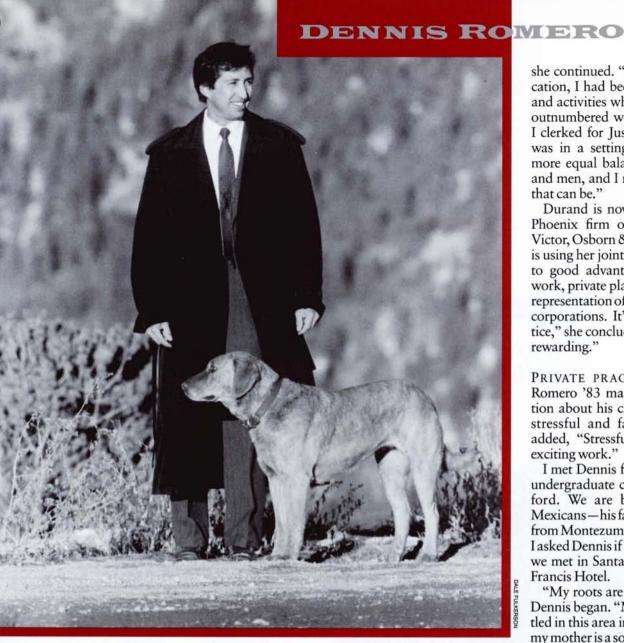
Garcia enjoys working with "both minority and non-minority students. I talk with Latino students from all over the country—they call me because I'm one of the few Latino law professors. Often they want to know what to do to become a law professor. The answer to that question is very individual, yet it's important to have someone with whom you can talk about general goals and opportunities.

"For Latinos, teaching is definitely possible and worthwhile," Garcia said. "Being a law professor is the best job I've ever had. But it's hard and lonely too. Having a substantial number of Latinos in the student body and faculty of a school is critical, but so is having a support program by which diversity students can acclimate themselves to the law school world. We need both."

### THE 1980s: BROAD HORIZONS

NEW LANDMARKS in Stanford Hispanic history were set by Anna Durand, JD/MBA'82. An honors graduate of the University of New Mexico, she earned election to the Order of the Coif and served as managing editor of Volume 34 of Stanford Law Review. She then clerked for Judge Choy of the U.S. Ninth Circuit Court of Appeals and was chosen by Justice Blackmun





to clerk at the United States Supreme Court. Durand may be the first Hispanic-and almost certainly the first Hispanic woman-to become a Supreme Court clerk. 10

"My second year at Stanford," Durand began, "Professor Méndez called me into his office and pushed me to apply for a Supreme Court clerkship. As I recall, I was afraid that everyone would laugh at me for having the audacity to even apply." Clearly, Justice Blackmun was of a different opinion.

The Supreme Court clerkship, Durand says, was a grueling but fascinating experience. "We worked seven days a week-the intellectual stimulation was constant. The four clerks had breakfast with Justice Blackmun every weekday morning. We'd discuss all sorts of things-both personal and legal. It was a very special opportunity to know someone who is a part of history. It was also exciting to be near the center of legal thought and to work with people whose opinions I had read in law school."

Of her time at Stanford, Durand recalls: "I wasn't attuned to some of the issues that other minority students thought were important. Students who went to Ivy League colleges-where they were a distinct minority - seemed to have given race-related issues quite a bit of thought. My experience at the University of New Mexico, where there are a lot of Hispanic students, was very different.

"I was more sensitive to my role as a woman than as a minority student,"

she continued. "Throughout my education, I had been involved in classes and activities where men significantly outnumbered women. It wasn't until I clerked for Justice Blackmun that I was in a setting where there was a more equal balance between women and men, and I realized how pleasant that can be."

Durand is now a partner with the Phoenix firm of Meyer, Hendricks, Victor, Osborn & Maledon, where she is using her joint business/law training to good advantage. "I do securities work, private placements, and general representation of small to medium-size corporations. It's a demanding practice," she concluded, "but I find it very rewarding."

PRIVATE PRACTITIONER Dennis Romero '83 made a similar observation about his career: "Law is highly stressful and fast paced." But, he added, "Stressful work can also be exciting work."

I met Dennis for the first time in an undergraduate calculus class at Stanford. We are both northern New Mexicans—his family from Taos, mine from Montezuma. This summer, when I asked Dennis if I could interview him, we met in Santa Fe at the historic St. Francis Hotel.

"My roots are very New Mexican," Dennis began. "My father's family settled in this area in the early 1700s, and my mother is a southern New Mexican of several generations."

Dennis now practices in Taos as the younger partner in the father-son firm of Romero & Romero. "We have a plaintiff's practice, involving civil rights, personal injury, domestic relations, and title work," he said.

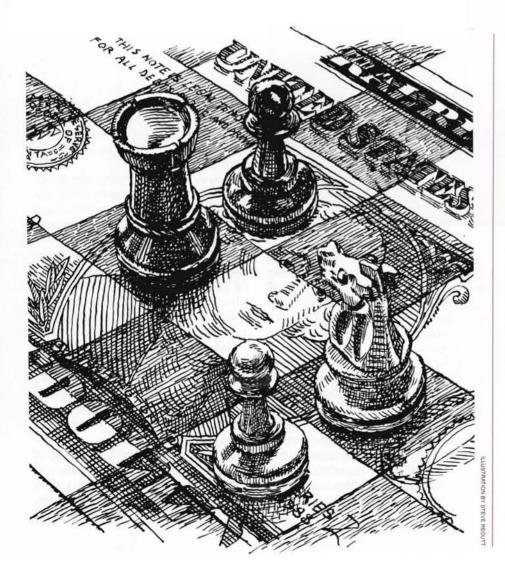
"Most of my clients speak Spanish, so I converse with them in Spanish. It's rewarding and helpful. They trust me because I am Hispanic and because I can help them in a society and legal system that is primarily English speaking."

Indeed, a working knowledge of Spanish is essential to a resolution of land title cases in New Mexico, since the original documents are in that language. "Ownership is sometimes very



### Management or Shareholders?

When a company becomes a takeover target, who should have the power to decide whether to sell?



by Ronald J. Gilson Professor of Law

THE MOST controversial issue in corporate law today is the demand, by the managers of target companies, for unilateral authority to block a hostile tender offer—in their terms, to Just Say No!

Not surprisingly, the turn of phrase chosen by these directors and officers leaves ambiguous the precise issue on which the debate should center: To whom does Management want to say no? As Management poses the issue, it is corporate raiders. The image is of stalwart Management protecting shareholders against a marauding outsider. That image, however, is seriously misleading: In fact, Management seeks the power to say no to its own shareholders.

The recent TW Services case illustrates the point. Some 88 percent of the target stock had been tendered in response to a hostile offer, and the target company's chairman admitted: "I think the stockholders like the...price." Thus when TW's management blocked the offer by declining to redeem its poison pill, it was in effect saying no to 88 percent of its

shareholders. So understood, demands by critics that Management justify its right to say no are not surprising. Normally we don't allow the agent's preferences to trump those of the principal.

I have undertaken to examine the various justifications that have been offered for giving target Management such power. None, it turns out, withstands analysis-a point that bears emphasis at this stage of the debate, when courts are commonly setting forth a veritable litany of potential justifications, without pausing to establish their plausibility. This leaves what may be the most interesting question of all: What is the real reason behind Management's tenacious campaign for the right to Just Say No?

But first, a brief look at the proffered justifications. (Readers interested in a fuller discussion are referred to my original article in the Legal Times—see endnote.)

History reveals three categories of justifications for giving Management the power to block a tender offer: legal, paternalistic and social. It also reveals a dramatic shift in the nature of the categories. The focus has moved from claims that blocking an offer benefits shareholders, to the very different claim that Management is warranted in blocking an offer even when doing so is detrimental to shareholders.

#### **False Analogies**

The initial set of justifications, dating to the late 1970s, consisted of legalstyle arguments that relied on analogy to support Management's power to block a hostile tender offer. Given that Management had the power to block transactions that were claimed to be the functional equivalents of tender offers because they also involved transfers of control, Management should be empowered to block tender offers as well. State corporate statutes explicitly require director approval of mergers or sales of assets; implicit in this is the power to reject. And because a tender offer has the same result as a merger or sale of assets (the argument goes), Management should have the same authority.

The problem with this justification is its impact on the structure of corporation governance. If accepted, Management would be given a virtual monopoly on the market for corporate control; Management could not be displaced without its own permission.

Management advocates responded by pointing out that Management could still be displaced through corporate political action: the hostile offerer could wage a proxy contest.

'Normally we don't allow the agent's preferences to trump those of the principal.'

That response, however, gives away the game. Once Management concedes that some way must exist to displace it without its permission, the issue reduces to whether a proxy contest is an effective displacement technique. And Management has never attempted to show that, despite its domination of the proxy machinery and the difficulties of organizing and energizing dispersed shareholders, proxy contests work. In fact, recent case law is replete with Management efforts to erect barriers to shareholder use of the proxy process, and recent state legislation restricting the right of shareholders to call special shareholder meetings hardly makes the proxy process more effective.

For good reason, then, these legal justifications never made much headway. Indeed, the Delaware Supreme Court, by adopting a proportionality test for defensive tactics in Unocal,2 rejected the claim that Management's role in tender offers should be the same as in mergers and sales of assets.

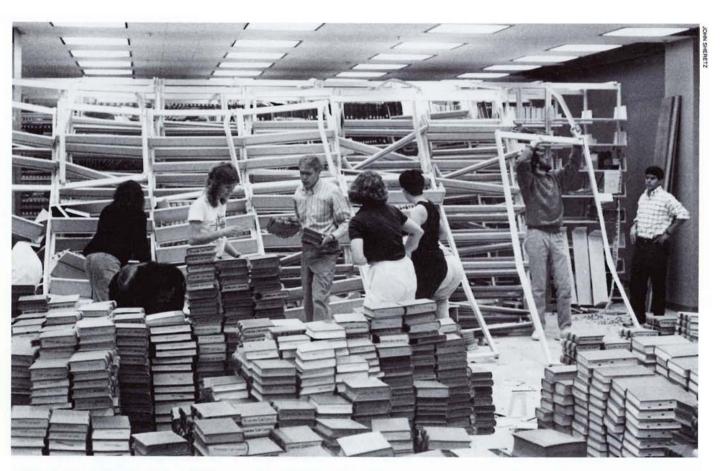
### Does Management Know Best?

The next set of justifications rested on paternalism. To benefit shareholders in general—or at least a particularly worthy subset of shareholders-Management should prevent shareholders from choosing for themselves. This approach at least had the attraction of irony. There was something wonderful about corporate management joining with the Critical Legal Studies movement in resurrecting paternalism as a policy counterweight to the Reagan era's focus on deregulation.3

The first paternalistic justification drew a sharp distinction between two categories of shareholders: good shareholders, who are interested in the long-term future of the corporation; and bad shareholders (arbitrageurs and speculators are the epithets), who are interested in shortrun trading profits. Blocking a tender offer, in this view, is necessary to protect the good shareholders. If Management doesn't act, bad shareholders, who will come to hold most of the stock of a company that is in play, will choose to tender their shares, and the takeover offer will succeed.

The argument has never held together, largely because the function of arbitrageurs in the tender offer process belies the distinction between short-term speculation and longterm investment. Arbitrageurs undertake the risk that a tender offer will not succeed by acquiring their shares from risk-averse long-term shareholders. Thus, it is hardly surprising that arbitrageurs always favor a tender offer. Arbitrageurs in effect stand as less risk-averse surrogates for long-term investors who have already demonstrated, by selling their shares to the arbitrageurs, that they perceived the long-term value of the company to be exceeded by the size





### Quake Report: It Could Have Been Worse

HE 7.1 EARTHQUAKE that rocked the area at 5:04 PM Tuesday, October 17, left Stanford Law School relatively unscathed. The only known personal injury was a facial cut—thankfully superficial—suffered by a student in the flight path of a card catalogue drawer.

Not to say there wasn't a mess. Approximately 80,000 library books hit the floor, many of them from 22 metal stacks that collapsed in the basement. Countless other books tumbled off shelves in faculty and staff offices. Several personal computers were broken or otherwise discombobulated. An elevator jumped its tracks. Plumbing leaks spoiled some carpeting. Dislodged ceiling tiles, often accompanied by considerable white powder, added to the disarray.

Outside, however, evidence of the quake was

limited to a few red roof tiles lying broken on the ground. A safety inspection the next day (Wednesday) confirmed the absence of structural damage to the reinforced concrete structure. Crown Quad, in use since 1975, had survived the challenge.

Thursday—just one day and two nights after the quake—classes resumed and the cleanup began. With one of the few Stanford libraries then certified safe, the Law School attracted volunteers from all over campus to help reshelve books. These efforts not only speeded the return to normality but also, as Dean Brest gratefully noted, minimized the fiscal impact of the quake.

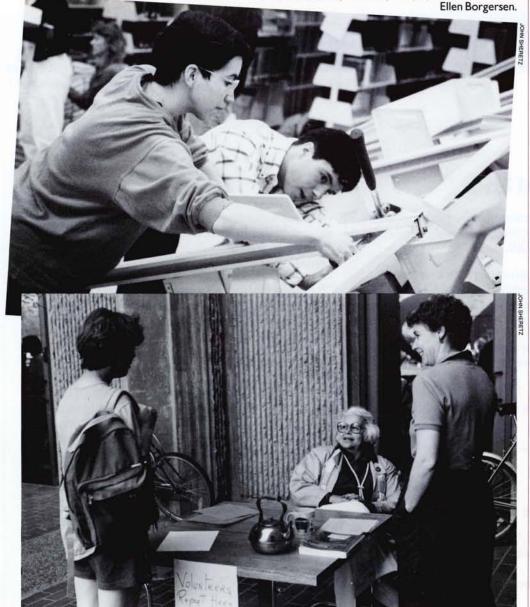
As is, the estimated cost to the School is \$55,000. Of this, some \$10,000 is for repair of 1,900 library volumes - 100 of them rare books-found damaged. An additional amount, yet to be determined, will be

needed for new and sturdier basement shelving.

"Where were you when...?" stories abound. The quake struck during the height of the fall interviewing season - a rite that no mere Act of God could cancel. One student caught in a third-story office says that the interviewer (a New Yorker) resolutely ignored the shaking environment and her warnings, until she physically pulled him under a desk. Only momentarily distracted, he coolly resumed: "Now, what about your grade sheet?"

In the same spirit, 15 of 28 law firm representatives, properly garbed in suits and ties, showed up the next day for their appointments. Some two-thirds of the scheduled students were there, too. Interviewing took place al fresco, in sun-washed Cooley Courtvard. Said one student: "Hey - you can't beat the weather."

Post-quake volunteers included (top left) Ana Rita Guzman (3L) and (below) faculty secretary Mary Tye and Assoc. Dean



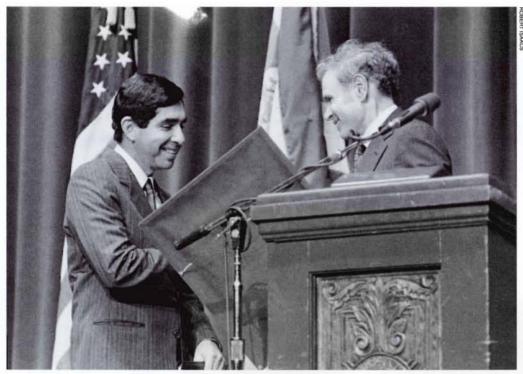
Ralston Prize

### **Arias Links** Peace to **Economic Prosperity**

COSTA RICAN PRESIDENT Oscar Arias Sánchez received three standing ovations from a packed Dinkelspiel Auditorium October 5, when he delivered a public lecture and received the Law School's Jackson H. Ralston Prize in International Law. His visit fulfilled a commitment made last year to speak at Stanford as Ralston Lecturer (Stanford Lawyer, Spring 1988, page 38).

The 1987 Nobel Peace Prize laureate was introduced by University President Donald Kennedy and Law School Dean Paul Brest, "President Arias's work manifests his belief that a nation's responsibilities are not coterminous with its boundaries," said the Dean. "His commitment to transnational responsibility is precisely what makes his crusade our own. His message is... of the realities of global interdependence. And though the citizens of Costa Rica chose him as their president, his vision encompasses the entire world."

Arias, who was democratically elected, leaves office in May after having served since 1986 as his nation's leader. In his Ralston address, he linked the search for peace to economic progress. "Underdevelopment and widespread poverty breed violence," he said. "Nothing undermines the



Dean Brest presented the Ralston Prize to President Arias.

struggle for development more than a threat to peace; and nothing undermines peace more than obstacles to development."

The Costa Rican president called for "economic support and understanding to help us [Central Americans] ensure that we have the social and economic conditions to sustain peace and democracy."

He particularly mentioned three needs: sensitivity by creditors to "the political consequences of their negotiations with debtors"; "more stable prices for our exports"; and "access to new markets."

While acknowledging the difficulty of achieving peace and prosperity, Arias reminded the audience that

### Oscar Arias Sánchez

### On Means and Ends

"I believe that domestic tranquility and external security may be attained in our hemisphere only if freedom and democracy prevail in all countries."

"The same economic crisis of the 1980s that contributed to some extent to the fall of various dictators has itself become a stumbling block for the preservation of democratic regimes."

"The coming years will be characterized by the struggle to obtain adequate economic growth and to distribute

it among the people to ensure the survival of democracy. Free elections mean very little to those who seldom eat or for those deprived of shelter."

"As with many things in life, it is easier to share goals than to agree on the ways to achieve them."

"Many of the problems we face today have a history, and it is important that we

read that history together. In many cases, those who are more to blame for the problems of today have benefited from them. It seems only fair that they make a greater contribution to finding solutions."

"It is unfair to blame for land erosion a poor peasant who burns the forest in order to sow maize. It is equally unjust to blame a housewife and her domestic appliances for our problems with the ozone layer."

"No one should impose his solutions on others, but no

one has the right to oppose this international agenda that includes, from the earth to the sky, the need to draw a human face for the world of the future."

The complete text of Arias's Ralston Lecture is being published in Vol. 26, No. 1, of the Stanford Journal of International Law. For a copy, call (415) 723-1375. there is no alternative to optimism. "We are not slaves of realism," he declared in his concluding remarks. "We must maintain our ideals. Reason should promote our good intentions, not discourage them. Optimism is not an illusion. But it can only become real when people like you take responsibility for making the changes which are necessary for that century of peace that has yet to come."

At the reception following, Arias mingled with students, faculty and other guests. Notables present included Prof. William B. Gould III (chair of the committee that recommended Arias for the Ralston award), Prof. Robert H. Mnookin (director of the Stanford Center on Conflict and Negotiation), and—a welcome surprise -Carlos Fuentes, the noted Mexican novelist and diplomat, who had just made an unrelated appearance in nearby Kresge Auditorium.

While at Stanford, Arias also participated in a private colloquium of selected University faculty and Costa Rican government officials. And earlier in the day, he was feted by the mayor of San Jose, California, who named him an honorary citizen.

AT THIS WRITING the School is eagerly awaiting the visit on January 21 of the next Ralston Prize honoree, Pierre Elliott Trudeau, former prime minister of Canada. More in the next issue.

Law and Business

### New Munger Chair Advances Real-World Curriculum

NANCY AND CHARLES Munger of Los Angeles have endowed a Law School professorship in business. Hailed by Dean Brest as "a critical part of our expanding Law and Business curriculum," the new chair is intended to promote and help underwrite the development of tive, legal publisher, and investor. Convinced that the nation's law schools should do a better job of preparing attorneys to practice in the world of business, he has worked with Stanford both as a long-time member of the School's Law and Business Council and as a two-term



Donors Nancy and Charles Munger

new courses and approaches, both at Stanford and as a model for law schools generally.

Mrs. Munger, the former Nancy Elizabeth Barry, served ten years on the Stanford University board of trustees, including three years as a board vicepresident.

Her husband, Charles T. Munger, is an eminent attorney, business execumember of the Board of Visitors (1976-79, 1983-86).

The Munger chair has already borne fruit in the form of a course initiated in the 1990 spring term. Titled "What Lawyers Should Know About Business," it is being created and taught by William Glikbarg as Acting Nancy and Charles Munger Professor of Business. Glik-

barg, a graduate of both Stanford (AB '46) and Harvard (JD '50), is a former law firm partner (Swerdlow, Glikbarg & Shimer of Los Angeles, 1952-70) and now major real estate investor, who helped develop L.A.'s Museum Square.

The new professorship is intended to encourage the development within the Law School of courses in business principles and strategies ordinarily taught in business schools. It complements two other Law School chairs: the Ralph M. Parsons Professorship in Law and Business held by banking expert Kenneth E. Scott; and the planned Charles J. Meyers Professorship, for which endowment contributions are currently being raised.

These dedicated chairs fit within the broad framework of the School's developing Law and Business program led by Professor Ronald J. Gilson and involving many other members of the faculty. One notable step was the establishment, in the past two years, of a structured business law course sequencean effort aided by a major Centennial gift from Board of Visitors chair Kendyl Monroe '60 (Spring 1987, page 33).

For a comprehensive view of Stanford's Law and Business program, readers are referred to the cover story of the Spring 1988 issue, "What's Next for Business Law," coauthored by Gilson. (Another Gilson article, in his specialty of corporate governance, begins on page 22.)

Now, more about the donors of the new Munger Professorship:

### NANCY AND CHARLES MUNGER

NANCY BARRY MUNGER graduated from Stanford University in 1945 with a B.A. in economics, followed by a year's graduate work in history. An outstanding student, she received her bachelor's degree magna cum laude and was elected to Phi Beta Kappa.

Mrs. Munger has held significant leadership positions with educational and community organizations. For Stanford University, she has been not only a vicepresident and member of the Board of Trustees (1976-86), but also a director of Stanford University Hospital (1981-85), a member of the Visiting Committee for the University Libraries (1973-79), and a member of the Presidential Search Committee that selected Donald Kennedy (1980). She is currently serving for a seventh year on the board of overseers of the Hoover Institution on War, Revolution and Peace.

Mrs. Munger is also a director of the Metropolitan YMCA of Los Angeles, a trustee of the Doheny Eye Institute, and a member of the board of overseers of the Henry E. Huntington Library and Art Gallery.

The Marlborough School in Los Angeles, of which she is a graduate, is another focus of her volunteer service. She has been chairman of its board of trustees, a ten-year trustee, and president of its alumnae association, and in 1982 was chosen as "Marlborough Woman of the Year."

Mrs. Munger has also been an active supporter of Children's Hospital in Los Angeles, for whom she chaired the volunteer group, Las Madrinas. In addition, she has held the offices of counselor to the Southern California Phi Beta Kappa Alumni and secretary to the Junior League of Los Angeles.

CHARLES T. MUNGER is vice-chairman of Berkshire Hathaway and chairman of several of its subsidiaries, including Wesco Financial Corporation, a savings and loan holding company.

Berkshire Hathaway, which is chaired by noted investor Warren Buffett. also owns subsidiaries engaged in insurance, newspaper and encyclopedia publishing, candy manufacturing and retailing (See's), and many other businesses. Its insurance subsidiaries are large stockholders in Washington Post, GEICO, Capital Cities/ABC, Coca Cola, Salomon, Gillette, and U.S. Air.

Asked about the success of the Buffett and Munger enterprises, Munger once said: "We have venture-some natures. But we like the bets to be in our favor."

Munger independently co-controls and is chairman of Daily Journal Corp., which publishes the Los Angeles Daily Journal and San Francisco Banner Daily Journal, California's leading legal newspapers.

His considerable legal credentials include seventeen years of full-time legal practice and the founding in 1962 of the noted Los Angeles law firm of Munger, Tolles & Olson.

Munger is known in the business and law communities for his keen and principled observations, as well as his practical accomplishments. Though invested in savings and loan banking, he and Buffett recently lambasted the national S&L lobbying group for "disgraceful efforts" to weaken proposed government reforms of the troubled industry.

Wesco Financial Corporation, with Munger as chairman of the board, is the parent company of one of the most solid S&Ls in the country, Mutual Savings and Loan Association of Pasadena. Wesco is also remarkable for the candor and forthrightness of its annual reports to stockholders.

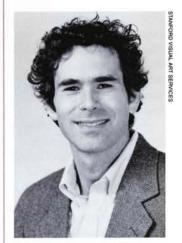
Munger was born in Omaha, Nebraska, in 1924. A University of Michigan student when World War II broke out, he volunteered for the Army Air Force, where he specialized in meteorology after completing an M.S. program at Cal Tech. Following the war, he attended Harvard Law School, was on the board of editors of the Harvard Law Review, and received his law degree in 1948.

He then practiced law with the Los Angeles firm of Musick, Peeler & Garrett, where he became a partner, remaining until 1962 when he established his own firm.

Charles and Nancy
Munger were married in
1956. Their combined family includes eight children,
of which four have earned
Stanford undergraduate or
law degrees.

New Faculty

### Bankman, a Tax Expert, Is Here to Stay



Joseph Bankman

JOSEPH BANKMAN, a noted authority on tax law, has joined the faculty as a full professor. Experienced both in law firm practice and in teaching, Bankman, 34, is president of the American Association of Law Schools' Tax Section.

His faculty appointment, which took effect September 1, followed a year at the School as a visiting associate professor.

Bankman was previously on the faculty of the University of Southern California Law Center, where he was chosen "Outstanding Professor of the Year" for 1984-85. He has also practiced tax law as an associate from 1980 to 1984 with the Los Angeles firm of Tuttle & Taylor.

"Joe Bankman is one of the most promising tax scholars in the nation," said Dean Brest in announcing the appointment. "He brings new distinction and strength to our program in business law. Beyond the facts of tax law, he undertakes to examine their underlying rationale and consequences—whether the laws are efficient and equitable."

Bankman tackled the progressivity of income tax rates, in one noteworthy article. He concluded that the system of taxing those with higher incomes at higher rates is justified under a consequentialist political philosophy.

The article, coauthored with Thomas Griffith, was published as "Social Welfare and the Rate Structure: A New Look at Progressive Taxation," in California Law Review (December 1987). The fullest contemporary analysis of the issue, it responded to a standing critique of progressivity published in the 1950s by scholars Harry Kalven and Walter Blum, titled "The Uneasy Case for Progressive Taxation."

Progressivity, Bankman explained in a recent interview, results in "welfare gains from redistributing income, but also some cost, in that it interferes with private economic ordering. The goal is to balance gains against costs."

In other articles Bankman has looked at antidiscrimination requirements for pensions, taxation of long-term debt, the tax treatment of passive gains and losses, and taxation of risky investments.

Bankman also has a book, Federal Income Taxation, coauthored with Griffith, due out next year from Little, Brown & Co. In addition, Bankman has participated with two others in the forthcoming revision of the eighth edition of a classic text on the subject, also called Federal Income

Taxation (Little, Brown).

Asked about the recurrent debate over whether to reduce capital gains taxes, Bankman said: "A case can be made for reducing taxes on capital generally. However, reducing tax rates only on certain forms of capital introduces complexity into the law and distorts economic activities." A tax break for capital gains alone, he explained, would push investors into activities that qualify for that break, in preference to other types of capital investments that might be as good or better for the economy.

Bankman was born August 15, 1955, in Moline, Illinois. He attended college at UC-Berkeley, graduating in 1977 magna cum laude, with election to Phi Beta Kappa. In 1980 he received his law degree from Yale and entered practice with Tuttle & Taylor. He began teaching in 1983 as a lecturer at the University of Southern California Law Center, leaving practice the next year to join the USC faculty full time as an assistant professor. In 1986, he was promoted to associate professor at USC, and in 1988 was invited to visit Stanford, where he favorably impressed both students and faculty.

Bankman teaches a full range of tax courses, including basic income tax, corporate shareholder tax, partnership tax, and tax policy.

New Faculty

### Grundfest '78 Arrives from SEC



Joseph Grundfest

JOSEPH A. GRUNDFEST of the Class of 1978 joined the faculty this January after five years of government service in Washington, D.C.-four (1985-90) as a commissioner of the Securities and Exchange Commission. He had previously (1984-85) been with the Council of Economic Advisors in the Executive Office of the President, as counsel and senior economist for legal and regulatory matters.

Now a Stanford associate professor, he teaches corporate law, securities regulation, and mergers and acquisitions.

"Joe Grundfest has a phenomenal breadth of knowledge about capital markets and their regulation," says Dean Brest. "His presence will greatly strengthen our business law curriculum."

Grundfest, 38, is an economist as well as a lawyer. In 1972, while still an undergraduate at Yale University, he completed the M.Sc. program in mathematical economics and econometrics at the London School of Economics. He received his B.A. in economics from Yale in 1973.

From 1973 to 1978 he was an economist and consultant for the Rand Corporation, during which time he was also a California State Fellow for the Study of Law and Economics (1974-78) and a graduate student in the joint J.D.-Ph.D. program at Stanford. When he graduated from law school in 1978, he had also completed all requirements other than a dissertation for a doctorate in economics.

He then moved to Washington, D.C., where he became a research fellow in economics at the Brookings Institution and practiced law for five years (1979-84) with the Washington, D.C., firm of Wilmer, Cutler & Pickering. His first government post, with the CEA, followed in 1984.

Grundfest was sworn in as an SEC commissioner on October 28, 1985. The four years in which he served witnessed the largest insider trading cases in history, an unprecedented level of corporate restructuring activity, and several market crashes or near crashes. His goal as a commissioner, he said in a recent interview, was to "promote market-oriented solutions to market problems."

Grundfest describes himself as a "free market Democrat," explaining: "I share many of the compassionate goals long associated with the Democratic party but believe that markets work. Congress can write and pass all the legislation it likes, but it can't repeal the laws of economics."

Grundfest is author or co-author of numerous research reports and publications, on such topics as contests for corporate control, insider trading, international securities regulation, and the legal and economic regulation of markets subject to kickback schemes. His next major writing project is the preparation of a book, Perestroika on Wall Street, which will describe some of the tumultuous market events of the past four years and discuss policy measures that may be necessary to prepare America's capital markets for the 21st century.

Asked what draws him back to academia, Grundfest said: "I'm very interested in broad public policy issues and want to pursue them in a way that can't really be done in the midst of a busy law practice. I've been exceedingly fortunate to have some magnificent teachers," he added. "I'd like to begin putting back some of what they gave me."

Grundfest is now developing a new course — Capital Markets and Securities Regulation—that expands the traditional securities regulation materials by introducing international transactions, options and futures markets as a core component of the course. "We need to prepare students for the markets that will exist five or ten years from now," he said-"not for markets that existed five or ten years ago."

A native New Yorker, Grundfest attended Stuyvesant High School in Manhattan. He is married to Stanford graduate Carol Chia-Ming Hsu (BS '76), a biochemist who has been assistant vice president for scientific and regulatory affairs at the Pharmaceutical Manufacturers Association in Washington, D.C.

New Faculty

### Weiss Adds Depth in Law and Economics



**DeborahWeiss** 

DEBORAH M. WEISS represents the newest generation of legal scholars. Broadly educated, she holds degrees in three fields from three different institutions: from Yale, a B.A. cum laude in philosophy (1980); from Columbia, a J.D. (1983); and from Harvard, an M.A. (1988) and a Ph.D. (forthcoming) in economics.

While at Columbia, she served as articles editor of *Columbia Law Review*. A review note by her on the enduring question of impossible attempts—

"Scope, Mistake, and Impossibility: The Philosophy of Language and Problems of Mens Rea" appeared in Vol. 83 (1983) of the journal.

Weiss, 31, has been engaged in a number of research projects. In the summer of 1980, she was a research assistant at Columbia Graduate School of Business, supervising a study of managerial practices in banking. The next summer, at Columbia Law School, she examined legal and economic aspects of U.S. non-tariff trade barriers. And in 1986, at the national Bureau of Economic Research, she studied implications of the new tax code's alternative minimum tax for corporate investment decisions.

Weiss is acquainted with law firm practice from summer clerkships at three firms: Barrett, Smith, Schapiro, Simon & Armstrong of New York (1982); Kirkland & Ellis in Chicago (1983); and Goodwin, Proctor & Hoar of Boston (1984). She has also gained some teaching experience as a section leader for introductory economics courses at both Harvard (1986-87) and Yale (1987-88).

Weiss joined the Stanford Law faculty in September 1989 as an assistant professor. Her teaching fields are finance theory, taxation, and economics. During the spring term, as an Olin Fellow in Law and Economics, she is concentrating on a study of the distribution of pension coverage.

She and the School's other new assistant professor, James Q. Whitman (see next article), have been married for two years.

New Faculty

## Whitman Brings Comparative Perspective



**JamesWhitman** 

IAMES Q. WHITMAN comes to Stanford from a clerkship with Judge Ralph K. Winter of the U.S. Court of Appeals, Second Circuit. A standout 1988 graduate of Yale Law School, he earned the Scharps Prize for best third-year essay, and was a senior editor of the Yale Law Journal. In 1987 he served as a summer associate at the New York City law firm of Fried, Frank, Harris, Shriver & Jacobson.

Whitman has coupled his legal training with distinguished work in another field—Intellectual History in which he earned a Ph.D. in 1987 from the University of Chicago. His dissertation-"Rule of Roman Law in Romantic Germany, 1790-1860"-is scheduled to be published by Princeton University Press. He previously earned an M.A. in European History at Columbia (1982) and a B.A. summa cum

laude in Comparative Literature at Yale (1980), where he was elected to Phi Beta Kappa during his junior year.

Now 32, Whitman is already the author of six scholarly articles. In addition, he admits to a working knowledge of German, French, Latin, and Greek, and a passing acquaintance with Italian, Dutch, Hebrew, and Sanskrit.

Because his historical studies often deal with business law, Whitman brings strengths in two areas of the curriculum. His principal teaching subjects are European legal history (currently crosslisted in the History Department), bankruptcy law, commercial law, and Roman law.

On the research front, Whitman is undertaking a long-term comparative study of the legal history of the New Deal. The first phase, now in progress, explores European influences on American labor law during the volatile period between the two world wars.

### Students Launch Public Policy Journal

AN INNOVATIVE new journal designed as a bridge between law and public policy was introduced October 17 at Stanford Law School.

Created and edited by law students, the premier issue of Stanford Law & Policy Review provides overview articles by national authorities on several issues expected to be crucial in the 1990s. The new publication will spotlight problems and help policymakers understand how courts and legal interpretation may affect proposed policies.

"We want the journal to be more than just a research outlet," says Law & Policy co-founder Chip Wood (3L). "Our goal is to put good ideas in the hands of the people who need them most — the decision makers in this country. who face incredibly complex problems."

The journal's readership is expected to include practitioners as well as scholars, and non-lawyers as well as lawyers. The student editors hope that their

publication will also give lawyers insight into policy consequences of cases they litigate.

In designing the new journal, the founding editors chose not to imitate the "dry" approach of traditional law journals but rather to adopt a more inviting, magazine-like format and writing style.

The journal's broad editorial scope is suggested by the contents of its introductory issue: public schools (by Arkansas governor Bill Clinton), children (Children's Defense Fund founder Marian Wright Edelman), cities (MIT professor Phillip Clay), drugs (congressman Charles Rangel), the homeless (housing analyst Mary Ellen Hombs), welfare programs (New Jersey governor Thomas Kean), education and the economy (University of California president David Gardner), and the environment (former EPA attorney William Pedersen, Jr.).

Dean Brest, in a welcoming statement, praised the enterprise, saying, "The

need for bringing legal expertise to bear on the analysis of policy issues has never been greater." University President Donald Kennedy saluted "the law students who conceived of the idea for a new national publication and who, through their perseverance and dedication, have made it a reality."

The student founders of the publication, in addition to Wood, are Eduardo Bhatia, Tony Arnold, John Utton, and Leslie Book (all 3L). Currently Law & Policy has 43 members and is managed by a seven member board.

The journal will come out twice a year. Topics for future issues include the savings and loan crisis, legal and policy responses to racism, and medical ethics.

Subscriptions can be purchased by institutions for \$45 per year and by individuals for \$24 per year. Orders and inquiries should be sent to Stanford Law & Policy Review, Stanford Law School, Stanford, CA 94305-8610. □



Law & Policy's founders and managing board: front, I-r, William Needle, Stephanie Rosen, Chip Wood, Tony Arnold, and Elizabeth Butler; back, I-r, Chip McLean, Rod Younker, Sam Sandmire, Keith Hannigan, and David Harris. (Not shown are Eduardo Bhatia, Leslie Book, Natalie Manzo, and John Utton).

Hail and Farewell

"MAY YOU DO WELL, and may you do good." These were Dean Paul Brest's parting words to the School's 1989 graduates, as he urged them to make pro bono service an integral part of their careers.

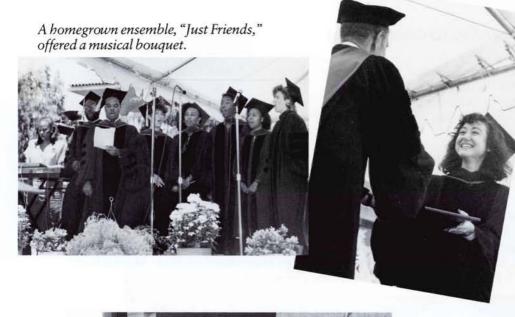
The Dean's charge was delivered during a sunlit outdoors ceremony Sunday, June 18, following the University commencement exercises. The 188 Law School graduates included 183 earning the J.D. degree, 3 a master's, and 2 the doctoral level J.S.D.

While generally celebratory, the graduating students nonetheless took care to honor two individuals who could not be present: Lisa Schnitzer, a classmate killed by a drunken driver during her first year of law school; and John Kaplan, the professor then battling a brain tumor (see "In Memoriam").

For Schnitzer, there was a moment of silence and the announcement, by class president Mary J. Dent, that a memorial tree will be planted in Crocker Garden.

And for Kaplan, there was the ultimate accolade Stanford Law students can pay a professor—the John Bingham Hurlbut Award for excellence in teaching. Kaplan's wife, Betty, accepted the award certificate on his behalf. And Prof. Robert Weisberg '79, a former Kaplan student and coauthor, delivered an eloquent tribute noting (among other things) that Kaplan had "jolted me and my classmates into the excitement of law."

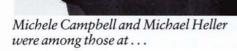




The 188 proud diplomates included Annette Faraglia (shown here with presentor Dean Brest) . . .

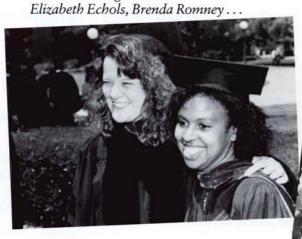


and Joseph Morman.

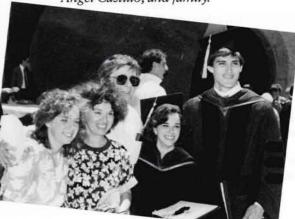


the post-ceremony festivities.





and Donna Shapiro-Castillo, Angel Castillo, and family.



PHOTOS BY JOHN SHERETZ

#### AWARDS TO GRADUATING STUDENTS

Nathan Abbott Scholar, for the highest cumulative grade-point average in the class: Michael Ramsey, winner also of the First- and Second-Year Honors for the highest average in each of his previous two years of law school.

Urban A. Sontheimer Third-Year Honor, for the second highest cumulative grade-point average in the class: Robin Cooper Feldman.

Order of the Coif, the national law honor society, to which the following were elected: Ramsey and Feldman, plus Ann Alpers, Jeffrey Robert Boffa, Ted Dane, Mary J. Dent, Erwin P. Eichmann, David Scott Fries, Beth Stacey Grossman, Gregory H. Hanson, Michael

Adam Heller, Martha Ruth Mahoney, Lawrence S. Pryor, Robert Perry Ruscher, Catherine Lee Sansum, Jefferson Forrest Scher, Allen S. Weiner, and Lois A. Weithorn. Mary Dent, as has been mentioned, is also president of the Class of 1989, while Lois Weithorn was president of Vol. 40 of the Stanford Law Review.

The 18 new Coif members also graduated "with

distinction," an honor accorded a total of 45 in the Class of 1989 for high academic achievement during their three years of law school.

Mr. and Mrs. Duncan L. Matteson, Sr. Awards, in the Marion Rice Kirkwood Moot Court Competition: Sallie Kim and Kelly Lynn Klegar as Best Team of Advocates. A second Matteson Award went to Sean Andrew Johnston and Christopher Kirk Lynch as the runner-up team.

Walter J. Cummings Awards, also in the Moot Court finals. For best oral advocate: Kelly Klegar. For best brief: Sean Johnston and Christopher Lynch.

Frank Baker Belcher Award, for the best academic work in evidence: Lynn Acker Starr.

Steven M. Block Civil Liberties Award, for distinguished written work on issues relating to personal freedom: Kim Elene Card and Carole Iris Chervin.

Nathan Burkan Memorial Competition, for the most outstanding paper on copyright law: Theodore Paton

Harris. Catherine Lee Sansum was the second-place winner.

Carl Mason Franklin Prize for best paper in international law: for 1988, Julie Bryant Miller; for 1989, Erwin Eichmann.

Richard S. Goldsmith Award, a University-wide prize for the best research papers concerning dispute resolution: Eichmann, as well as two winners from other departments (political science and education).

Olaus and Adolph Murie Award, for the most thoughtful written work in environmental law: Martha Ruth Mahoney. The second-place award went to 1988

Franklin Prize winner Julie Miller.

Board of Editors' Award, for outstanding editorial contributions to the *Stanford Law Review*: Jefferson Scher and Bryan Hobson Wildenthal II.

Johnson & Swanson Law Review Award for making the greatest overall contribution during his second year: also, Scher.



United States Law Week Award, for outstanding service to the Law Review: Robert Steven Gutierrez.

Hilmer Oehlmann, Jr. Prizes, for outstanding work in the first-year Research and Legal Writing Program: Card, Eichmann, Feldman, Gutierrez, Johnston, Miller, Ruscher, Weithorn, and Wildenthal, plus Iman Anabtawi, Carolyn F. Bostick, Eileen Chamberlain Donahoe, Julie Beth Gutman, Gary L. Hammer, Bruce Richard Hirsh, Arthur Francis McEvoy III, Catherine Scott, Thomas Albert Thompson, and Beatrice Anne Tice.

Lawrason Driscoll Moot Court Awards, to officers of the Moot Court Board: Heidi B. Gotlieb, Kenneth Alexander Kuwayti, Gretchen Ann Radtke, and Robert Donald Shapiro.

R. Hunter Summers Trial Practice Awards, presented by officers of Serjeants-at-Law for outstanding student performances: Jesus G. Bernal, Timothy M. Craig, Jeffrey Adam Herbst, Christopher Anthony Mathews, and Sean R. Santini.

# Student Newspaper at the Top of the Class

FOR THE SECOND consecutive year, the Stanford Law Journal has won first place nationally as the best law student newspaper in its class (schools with an enrollment of 750 or less). The award came in the 1988-89 Law School Newspaper/Magazine Competition sponsored by the ABA's Law Student Division.

The paper also captured three first-place awards for individual entries: two for editorial cartoons (one each on internal affairs and on broader aspects of the law); and one for best editorial on broader aspects of the law (in this case, nonpoverty public interest law).

Wendy Leibowitz and Ion Linden (both '90) were the editors of the Journal during the 1988-89 year for which this crop of awards was won.

The first-place ranking in the 1987-88 competition was achieved under the leadership of then editors Henry Bemporad '88 and Dan Counts '88. That year the Journal also won firstplace awards for a feature article, a written editorial, and an editorial cartoon.

The top cartoons both years were the work of student artist Peter Chadwick ('90). Readers may enjoy the example (winner in the 1988-89 "broader aspects of the law" category) reprinted herein. One of a series entitled "Orientation," the cartoon offers new law students a handle of sorts on two warring intellectual paradigms: Critical Legal Studies, and Law and Economics.

The spate of national awards to Stanford Law Journal comes as the student paper approaches the twentieth anniversary of its founding in the fall of 1970. (A story and photo commemorating that eventheadlined "The Birth of a Newspaper"-appears on page 70.)

Subscriptions to the Journal can be had for \$15 by writing the Business Manager, Stanford Law Journal, Stanford Law School, Stanford, CA 94305-8610; or calling (415) 725-2569.  $\square$ 

Peter Chadwick (3L) won a first with this 1988 spoof of the Critical Legal Studies and Law and Economics movements.

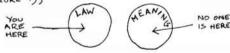
CLIP AND SAVE



# THIS WILL INCREASE IN VALUE TO YOU AS YOU BECOME MORE PESPERATE!

Should Movements YOU Know About

MAINTAINS THAT LAWS ARE MEANINGLESS RATIONALIZATIONS FOR THE ARBITRARY USE OF POWER (SEE FIGURE 1);



- Figure 1. See?.

THAT ALL PRINCIPLES BREAK DOWN IN APPLICATION; THAT LIFE ROTS; AND THAT YOU'RE DNLY GOING INTO LAW FOR THE MONEY. THE OBVIOUS COROLLARIES ARE THAT ACADEMICS CAN CHANGE ALL THIS AND THAT THE GOVERNMENT SHOULD RUN EVERYTHING. SUSPECTED BY OPPOSITION OF TAKING ORDERS PIRECTLY FROM COMMUNIST

TERRORIST GROUPS



CLS SCHOLAR CRITICIZING ARBITRARY DECISIONS

EVERYTHING IS BEST WORKED PRIVATELY, AND THAT ANY PERCENED INJUSTICES CAN BE HANDLED BY SITTING IN YOUR -- PRIVATE BACK YARD (HENCE THE NAME) AND PRINKING. GIN AND TONICS UNTIL THE PERCEPTION DISAPPEARS. SUSPECTED BY OPPOSITION OF BEING CLOSET SLAVE OWNERS.

LAWN ECONOMICS PEOPLE LEAN HEAVILY ON COMPLEX MATHEMATICAL ANALYSES TO PROVE THESE ARE CFTEN AMAZINGLY THEIR POINT. EFFECTIVE: BY THE TIME THEY GET TO THE THIRD GRAPH, YOU HAVE NO IDEA WHAT'S GOING ON AND YOU'RE

LET THE PARTIES INVOLVED SETTLE IT THEMSELVES. HAVE ANOTHER GIN AND TONIC?



# Faculty Notes

Barbara Babcock spoke on legal biography last June at the Law and Society Conference in Madison, Wisconsin. Her own biographical work-in-progress on Clara Shortridge Foltz received a lift this fall with the discovery of three greatgrandsons.

In October, Prof. Babcock spoke at a conference at the John Marshall School of Law celebrating the 200th year of the office of Attorney General. She drew on her experiences as Assistant Attorney General for the Civil Division (1977-1979) for the talk and an article entitled "Defending the Government."

John Barton lectured on intellectual property and biotechnology at the Australian Center for International Agricultural Research, as part of a World Bank study on biotech in developing nations, last May in Canberra. In November he delivered lectures in London and Brussels on U.S. trade law.

William Baxter reports that in 1988-89 he gave "a number of invited speeches and an even larger number of uninvited ones." Among the invited: "Antitrust, Innovation and Competitiveness: A Centennial Celebration of the Sherman Act," for a conference in Berkeley; "Antitrust Restrictions on the Employment of Standards," as part of a conference— Compatibility Standards and Information Technology: Business Strategy and Public Policy Issues conducted by the Center for Economic Policy Research; "Building and Using Mathematical Models," at a July conference

in Santa Fe sponsored by National Economic Research Associates; "Competition Law in a World Economy," for a late summer Stanford seminar; and "Competition Law in an Open Economy," at a September conference of the National Association of Business Economics.

In other appearances, he participated in a panel discussion, "Merger and Joint Venture Issues," during an antitrust program held in New York by The Conference Board; and cochaired an ABA National Institute Symposium in Washington, D.C., on The Cutting Edge of Antitrust: Exclusionary Practices.

Baxter, a former chief of the U.S. Justice Department's Antitrust Division (1981-83), also took part in a Columbia University conference-Divestiture Five Years Later-where he and Charles Brown (the former chief executive officer of AT&T with whom Baxter negotiated the breakup of the communications giant) spoke on the history of and reasons for the divestiture settlement.

Prof. Baxter continues to serve as Counsel to the Shearman & Sterling law firm.

Paul Brest has become a member of the board of directors of the Santa Clara County Bar Foundation. Other activities last spring included a two-day visit in March to the Albany (New York) Law School, where he talked to faculty and students about legal education. In April he and his wife, Iris, participated in a national symposium, The Civil Rights Movement and the Law, held at the

University of Mississippi. That month the Dean also presented the University of Tennessee's Alumni Distinguished Lecture in Jurisprudence. His topic: "The Revival of Civic Republicanism and the Possibility of Citizenship." In another mode, he spent two August weeks at the Snowbird (Utah) Chamber Music Institute, playing viola in string quartets.

Tom Campbell—on leave from Stanford since taking office in January 1989 as U.S. Congressman for California's 12th District—has been assigned to two legislative committees: Science. Space and Technology; and Judiciary. In June he introduced a civil rights bill to reverse the Supreme Court's Wards Cove decision concerning statistical proof in employment discrimination cases, a subject on which he had written two law review articles. He has also been working for antitrust legislation to free up the rules on joint production ventures in the U.S.

During his first year in office, Campbell held 87 town meetings throughout the district. And in September he and another first-term Stanford legislator—State Assemblyman Ted Lempert '86—were featured guests at a Law School showing of the Frank Capra/James Stewart film classic, Mr. Smith Goes to Washington.

Mauro Cappelletti was the 1988-89 Goodhart Visiting Professor of Legal Science at Cambridge University, England, where he taught a postgraduate course, "Problems of Justice and the Judicial Process: A Comparative Approach,"

and was appointed a Fellow of Clare College. While in England he also lectured at the University of Nottingham and participated in the first Congress of the Academia Europaea, of which he is a founder and council member. Prof. Cappelletti's recent publications include a new book, The Judicial Process in Comparative Perspective (Oxford University Press, 1989) and translations of previous works into Portuguese and Korean. Now in residence (for the winter semester), he is teaching comparative law.

Lance Dickson was a speaker at the annual conference of the British and Irish Association of Law Librarians, held in September at Oxford University, England. A new edition of his Legal Bibliography Index (compiled with coeditor Win-Shin S. Chiang) appeared this summer.

John Ely delivered the John A. Sibley Lecture in October at the University of Georgia School of Law. His address was titled "Another Such Victory: Constitutional Theory and Practice in a World Where Courts Are No Different from Legislatures."

Robert Flanagan, Cooperating Professor from the Graduate School of Business, is the author of a chapter on "Centralized and Decentralized Pay Determination in Nordic Countries" published in Nordic Wage Determination (Basil Blackwell, 1989).

Marc Franklin brought out a second edition of *The* First Amendment and the Fifth Estate and the fourth edition of an earlier book, Mass Media Law. He also wrote a chapter, "The Financial Impact of Libel Reform on Repeat Players," for The Cost of Libel (Columbia University Press, 1989), edited by E. Dennis and E. Noam. Prof. Franklin lectured on "The Future of Media Liability" at the Libel/Privacy Conference sponsored jointly by the American Newspaper Publishers Association, National Association of Broadcasters, and Libel Defense Resource Center.

Lawrence Friedman delivered the 45th Cleveland-Marshall Fund Lecture, in September at Cleveland State University College of Law. His address: "The Concept of the Self in Legal Culture." In October he presented another lecture. "Crimes of Mobility," as part of a series on the cultural context of law in diverse settings. Held in Berkeley, the lectures were sponsored by the Center for the Study of Law and Society and by the Robbins Canon and Civil Law Collection.

In February, Harvard University Press published Prof. Friedman's latest book, *The Republic of Choice: Law, Authority and Culture.* 

Friedman and Robert Gordon (see below), along with Sophie Pirie '87 and Edwin Watley (3L), are engaged in a study of lawyers and legal practice in Silicon Valley. A preliminary report appeared in the *Indiana Law Journal* (64:3, Summer 1989).

Ronald Gilson has joined the editorial board of Little Brown & Company. He delivered a lecture on the business judgment rule at a conference-Corporate Governance, Restructuring, and the Market for Corporate Control-at the Salomon Brothers Center for the Study of Financial Institutions at New York University's Graduate School of Business. And in August he had two working papers published: "What Triggers Revlon?" (with Reinier Kraakman of Harvard) and "The Law and Finance of the Business Judgment Rule." These papers are Nos. 54 and 55, respectively, in Stanford's John M. Olin Program in Law and Economics series.

Prof. Gilson's writings also appear frequently in publications for broader, nonacademic audiences. One such piece—"Management or Shareholders?" from the *Legal Times*—is reprinted at page 22.

Paul Goldstein delivered the keynote address of a conference on intellectual property protection for computer interfaces, convened in November by Software Information Center in Tokyo. Earlier in the fall, he served as general reporter for the annual meeting of the Association Littéraire et Artistique International in Quebec, where he also discussed questions related to computer-assisted creation of literary and artistic works.

Robert Gordon presented the Stuart Rome Lecture at the University of Maryland last March. His topic: "Law as a Public Profession." The next month, at Loyola University of New Orleans, he gave the Brendan Brown Lecture on the subject, "Critical Teaching." He is currently engaged in a study with Lawrence Friedman (see above) and two others on Silicon Valley law.

William B. Gould IV spent the 1989 fall term as a visiting professor at Howard University in Washington, D.C.

Hank Greely published an article, "AIDS and the American Health Care Financing System," in the University of Pittsburgh Law Review (Fall 1989), and contributed a chapter on the same topic to a French volume, SIDA: Contraintes Economiques et Politique de Santé (1989). The article, "Paying for AIDS" at page 10, is based on this work. Last summer the journal Constitutional Commentary published a Greely article on the history of a legal metaphor: "A Footnote to 'Penumbra' in Griswold v. Connecticut."

Greely is also pleased to report that in October, the U.S. Supreme Court denied California's petition for certiorari in the death penalty case, Coleman v. Risley—an action that preserved the Ninth Circuit en banc victory won earlier by alumnus Tim Ford '74 and Greely.

Thomas Grey delivered a paper at a symposium on Pragmatism in Legal Theory held February 22-23 at the University of Southern California Law School.

Prof. Grey has been assisting Stanford's Student Conduct Legislative Council in its efforts to define and restrict discriminatory harassment on campus consistent with the protection of free speech.

Gerald Gunther participated in two events marking the bicentennial of the Judi-

ciary Act of 1789 (the law that established the federal court system): a symposium on the history of the federal courts, in September in Washington, D.C.; and a November session of the U.S. District Court for the Northern District of California, where he delivered a paper, "The Role of the Federal Judge: The Learned Hand Model."

During the spring and summer, Gunther spoke out repeatedly on two major controversies that raised major First Amendment issues. The first was the effort to overturn the Supreme Court ruling finding political protest through flag-burning to be protected expression under the Constitution. He served as a member of an ABA Task Force on the First Amendment charged with preparing a report and resolutions for submission to the ABA's annual convention in August. The convention ultimately adopted the Task Force recommendations against both the proposed constitutional amendment and proposed federal legislation to criminalize flagburning.

The second issue stems from proposed regulations at Stanford to restrict speech amounting to racial harassment. Prof. Gunther has opposed the draft regulations as too broad and inhibitory of speech, in written commentaries and on ABC's "Nightline." (For more on this issue, see paired articles beginning on page 4.)

William Keogh '52, Adjunct Professor Emeritus, received a Distinguished Service Award from Kansas State University College of Engineering at its commencement in May. Keogh did his undergraduate work (in chemical engineering) at KSU. His career included international treaty negotiations and service as counsel and judge in criminal cases. A senior partner of Keogh, Marer & Flicker until 1985, he continues to practice solo in Palo Alto.

Charles Lawrence recently completed a two-year term as president of the Society of American Law Teachers. He was also one of four lawyers named among "90 People for the '90s" by the San Francisco Chronicle (Jan. 2, 1990). He and his family have been tasting student life in Stanford's Potter House, where he is serving as Resident Fellow.

Prof. Lawrence has also been active in the campus debate over how a university should deal with racist or other denigrating speech. An article by him on this issue, initially published in the *Chronicle of Higher Education*, is reprinted in the forum beginning on page 4.

Miguel Mendez provided the opening remarks for Stanford's Seventh Annual Public Interest Law Conference last October. On a personal note, Mendez and wife Victoria Sainz Diaz '75 had their first child (Gabriela) on June 16, 1989. Diaz is a former Assistant Dean for Development and Alumni/ae Relations (1981-83).

A. Mitchell Polinsky is one of the 25 most cited young (under forty years old in 1985) economists in the country, according to a survey in the Fall 1989 Journal of Economic Perspectives. The cite count, which

spanned the years 1971 to 1985, put Polinsky in 8th place, just ahead of Michael Boskin, the Stanford economist now serving in Washington, D.C., as Chairman of the Council of Economic Advisers. (Two other Stanfordites—John Taylor and John Shoven of the Economics Department—also made the list as 16th and 24th, respectively.)

Still cite-worthy, Polinsky had "A Note on Optimal Public Enforcement with Settlements and Litigation Costs" published in the 1989 volume of Research in Law and Economics. (Daniel Rubinfeld of Berkeley was the co-author.) He delivered a lecture, "A Model of Optimal Fines for Repeat Offenders," at the UCLA School of Management in September. And in January he gave a talk, "Enforcement Costs and the Optimal Magnitude and Probability of Fines," at the University of Michigan Law School.

Robert Rabin published an article on the Agent Orange litigation, "Tort System on Trial: The Burden of Mass Toxics Litigation," in the Yale Law Journal 98: 813 (1989). The essay was related to his continuing work on no-fault alternatives to toxic tort litigation for the American Law Institute's Tort Reform Project, Last October he attended a meeting in Philadelphia of reporters and consultants for the project. Later that month he testified before a congressionally established Nuclear Accident Study Commission, which was considering revisions to the Price-Anderson approach for handling a possible mass disaster at a nuclear power plant.

Deborah Rhode has pub-

lished a new book, Justice and Gender (Harvard University Press, 1989), which deals with American sex discrimination law over the last two centuries. She also has an article, "Gender Equality and Employment Policy," in The American Woman (Women's Research and Education Institute, 1989).

The January 5 San Francisco Banner Daily Journal reports a remarkable intellectual performance by Prof. Rhode during the annual meeting of the Association of American Law Schools. She and Alan Dershowitz of Harvard had been the scheduled speakers for a luncheon on legal ethics. When Dershowitz cancelled (for family medical reasons), Rhode argued his side as well as her own - a feat that the Journal said had her "literally jumping from one podium to the other."

Kenneth Scott attended several foreign conferences last summer, beginning May 30 with the three-day Seventh International Seminar on the New Institutional Economics, in Wallerfangen, West Germany. On June 14 he took part in the International Workshop on the Economics and Law of Banking Regulation, in Saarbrücken, West Germany. He later visited Wellington, New Zealand, for a conference, Current Issues in Bank Regulation Risk Management, on August 8-9. The summer ended with a trip to Lund, Sweden, for the August 28-29 Conference on the Law and Economics of Insurance and Other Financial Institutions.

Samuel Thurman '39, who once held the Stanford professorship named after Marion Rice Kirkwood, has himself been honored in the naming of a chair at the University of Utah (details on page 52).

Michael Wald was an invited speaker at the University of Michigan Conference on Child Welfare, where he addressed a sensitive question, "Family Preservation-When Is It Appropriate?" He also spoke at the American Public Welfare Association's Third Annual National Roundtable on Risk Assessment in Child Welfare. His topic: "Risk Assessment—The Emperor or the Emperor's New Clothes?"

Prof. Wald has been participating in the California State Task Force on Drug Exposed Infants. In addition he serves on the San Francisco Bar Association's Committee on Recruitment and Retention of Minorities by Law Firms.

Robert Weisberg delivered a paper, "Debt Crises, Commercial Morals, and Bankruptcy: 1789-1989," at the Georgetown Law Center Bicentennial Conference on the Judiciary Act of 1789, held in September in Washington, D.C. Currently a Stanford resident fellow, he is living, with his family, in the undergraduate Governor's Corner complex.

Sally Dickson has been promoted from Assistant Dean to Associate Dean, with continuing responsibility for Student Affairs. Also a resident fellow to Stanford undergraduates, she and her two children currently call Lagunita West home.

Thomas McBride has resigned, after seven years as the School's Associate Dean for Administration, to become Stanford University's Director of Environmental Health and Safety.

Frank Brucato, who has twice been Acting Associate Dean, is now permanently promoted to the position. Trained in business administration, Brucato joined the staff in 1983 and has been Manager of Financial Services since 1984.



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#### SPEECH: LAWRENCE

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suppress, without catching in the same net all kinds of speech that it would be unconscionable for a democratic society to

suppress

Such arguments seek to strike a balance between our concern, on the one hand, for the continued free flow of ideas and the democratic process dependent on that flow, and, on the other, our desire to further the cause of equality. There can, however, be no meaningful discussion of how we should reconcile our commitment to equality with our commitment to free speech, until it is acknowledged that racist speech inflicts real harm, and that this harm is far from trivial.

To engage in a debate about the First Amendment and racist speech without a full understanding of the nature and extent of that harm is to risk making the First Amendment an instrument of domination rather than a vehicle of liberation. We have not all known the experience of victimization by racist, misogynist, and homophobic speech, nor do we equally share the burden of the harm it inflicts. We are often quick to say that we have heard the cry of the victims when we have not.

The *Brown* case is again instructive, because it speaks directly to the psychic injury inflicted by racist speech by noting that the symbolic message of segregation affected "the hearts and minds" of Negro children "in a way unlikely ever to be undone." Racial epithets and harassment often cause deep emotional scarring and feelings of anxiety and fear that pervade

every aspect of a victim's life.

Brown also recognized that black children did not have an equal opportunity to learn and participate in the school community when they bore the additional burden of being subjected to the humiliation and psychic assault contained in the message of segregation. University students bear an analogous burden when they are forced to live and work in an environment where at any moment they may be subjected to denigrating verbal harassment and assault. The same injury was addressed by the Supreme Court when it held that, under Title VII of the Civil Rights Act of 1964, sexual harassment which creates a hostile or abusive work environment violates the ban on sex discrimination in employment.

Carefully drafted university regulations could bar the use of words as assault weapons while at the same time leaving unregulated even the most heinous of ideas provided those ideas are presented at times and places and in manners that provide an opportunity for reasoned rebuttal or escape from immediate insult. The history of the development of the right to free speech has been one of carefully evaluating the importance of free expression and its effects on other important societal interests. We have drawn the line between protected and unprotected speech before without dire results. (Courts have, for example, exempted from the protection of the First Amendment obscene speech and speech that disseminates official secrets, defames or libels another person, or is used to form a conspiracy or monopoly.)

Blacks and other people of color are skeptical about the argument that even the most injurious speech must remain unregulated because, in an unregulated marketplace of ideas, the best ones will rise to the top and gain acceptance. Experience tells quite the opposite. People of color have seen too many demagogues elected by appealing to America's racism, and too many sympathetic politicians shy away from issues that might brand them as being too closely allied with disparaged groups.

Whenever we decide that racist speech must be tolerated because of the importance of maintaining societal tolerance for all unpopular speech, we are asking blacks and other subordinated groups to bear the burden for the good of all. We must be careful that the ease with which we strike the balance against the regulation of racist speech is in no way influenced by the fact that the cost will be borne by others. We must be certain that those who will pay that price are fairly represented in our deliberations and that they are heard.

At the core of the argument that we should resist all government regulation of speech is the ideal that the best cure for bad speech is good—that ideas that affirm equality and the worth of all individuals will ultimately prevail. This is an empty ideal unless those of us who would fight racism are vigilant and unequivocal in that fight. We must look for ways to offer assistance and support to students whose speech and political participation are chilled in a climate of racial harassment.

Civil rights lawyers might consider suing on behalf of blacks whose right to an equal education is denied by a university's failure to ensure a nondiscriminatory educational climate or conditions of employment. We must embark upon the development of a First Amendment jurisprudence grounded in the reality of our history and our contemporary experience. We must think hard about how best to launch legal attacks against the most indefensible forms of hate speech. Good lawyers can create exceptions and narrow interpretations that limit the harm of hate speech without opening the floodgates of censorship.

Everyone concerned with these issues must find ways to engage actively in actions that resist and counter the racist ideas that we would have the First Amendment protect. If we fail in this, the victims of hate speech must rightly assume that we are on the bigots' side.

-Reprinted (with minor changes) from the Chronicle of Higher Education, October 25, 1989, where it appeared as an Opinion piece, "The Debate over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims." A more extended discussion of Lawrence's views is scheduled for publication in the Duke Law Review.

#### SPEECH: GUNTHER

Continued from page 9

statement to be a punishable resort to "fighting words." That was *Chaplinsky v. New Hampshire*, a nearly fifty-year-old case involving words which would very likely not be found punishable today.

More significant is what has happened in the nearly half-century since: Despite repeated appeals to the Supreme Court to recognize the applicability of the "fighting words" exception by affirming challenged convictions, the Court has in every instance refused. One must wonder about the strength of an exception that, while theoretically recognized, has for so long not been found apt in practice. (Moreover, the proposed Stanford rules are *not* limited to face-to-face insults to an addressee, and thus go well beyond the traditional, albeit fragile, "fighting words" exception.)

The phenomenon of racist and other offensive speech that Stanford now faces is not a new one in the history of the First Amendment. In recent decades, for example, well-meaning but in my view misguided majorities have sought to suppress not only racist speech but also antiwar and antidraft speech, civil rights demonstrators, the Nazis and the Ku Klux Klan, and left-wing groups.

Typically, it is people on the extremes of the political spectrum (including those who advocate overthrow of our constitutional system and those who would not protect their opponents' right to dissent were they the majority) who feel the brunt of repression and have found protection in the First Amendment; typically, it is wellmeaning people in the majority who believe that their "community standards," their sensibilities, their sense of outrage, justify restraints.

Those in power in a community recurrently seek to repress speech they find abhorrent; and their efforts are understandable human impulses. Yet freedom of expression—and especially the protection of dissident speech, the most important function of the First Amendment—is an anti-majoritarian principle. Is it too much to hope that, especially on a university campus, a majority can be persuaded of the value of freedom of expression and of the resultant need to curb our impulses to repress dissident views?

THE PRINCIPLES to which I appeal are not new. They have been expressed, for example, by the most distinguished Supreme Court justices ever since the beginning of the Court's confrontations with First Amendment issues nearly seventy years ago. These principles are reflected in the words of so imperfect a First Amendment defender as Justice Oliver Wendell Holmes: "If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate."

This is the principle most elaborately and eloquently addressed by Justice Louis D. Brandeis, who reminded us that the First Amendment rests on a belief "in the power of reason as applied through public discussion" and therefore bars "silence coerced by law—the argument of force in its worst form."

This theme, first articulated in dissents, has repeatedly been voiced in majority opinions in more recent decades. It underlies Justice Douglas's remark in striking down a conviction under a law banning speech that "stirs the public to anger": "A function of free speech [is] to invite dispute.... Speech is often provocative and challenging. That is why freedom of speech [is ordinarily] protected against censorship or punishment."

It also underlies Justice William J. Brennan's comment about our "profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks"—a comment he followed with a reminder that constitutional protection "does not turn upon the truth, popularity or social utility of the ideas and beliefs which are offered."

These principles underlie as well the repeated insistence by Justice John Marshall Harlan, again in majority opinions, that the mere "inutility or immorality" of a message cannot justify its repression, and that the state may not punish because of "the underlying content of the message." Moreover, Justice Harlan, in one of the finest First Amendment opinions on the books, noted, in words that Stanford would ignore at its peril at this time:

"The constitutional right of free expression is powerful medicine in a society as diverse and populous as ours....To many, the immediate consequence of this freedom may often appear to be only verbal tumult, discord and even offensive utterance. These are, however, within established limits, in truth necessary side effects of the broader enduring values which the process of open debate permits us to

achieve. That the air may at times seem filled with verbal cacophony is, in this sense, not a sign of weakness but of strength."

In this same passage, Justice Harlan warned that a power to ban speech merely because it is offensive is an "inherently boundless" notion, and added that "we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual." (The Justice made these comments while overturning the conviction of an antiwar protestor for "offensive conduct." The defendant had worn, in a courthouse corridor, a jacket bearing the words "Fuck the Draft." It bears noting, in light of the ongoing campus debate, that Justice Harlan's majority opinion also warned that "we cannot indulge in the facile assumption that one can forbid particular words without also running the substantial risk of suppressing ideas in the process.")

I restate these principles and repeat these words for reasons going far beyond the fact that they are familiar to me as a First Amendment scholar. I believe—in my heart as well as my mind—that these principles and ideals are not only established but right. I hope that the entire Stanford community will seriously reflect upon the risks to free expression, lest we weaken hard-won liberties at Stanford and, by example, in this nation.

— Adapted from two letters to the chair of the Student Conduct Legislative Council, dated March 10 and May 1, 1989, and published in Stanford University Campus Report on March 15 and May 3, respectively.

#### Footnote

1. These comments were directed at a proposal (later withdrawn in the face of criticism) to prohibit not only "personal abuse" but also "defamation of groups"—expression "that by accepted community standards...pejoratively characterizes persons or groups on the basis of personal or cultural differences."—G.G.

#### **LEGAL TRAINING**

Continued from page 3

sion, whose stated purpose is to "narrow the gap between legal education and the practice of law." It intends to review the ABA's accreditation standards relating to the teaching of lawyering skills, and it may well recommend changes in those standards.

IN SUM, law schools and the Bar both have valid concerns about the training of novice lawyers. I therefore enthusiastically welcome the establishment of the joint Commission on Lawvering Skills, which, for the first time, allows the Bar and the law schools to address these issues cooperatively. Indeed, cooperation may be extended to the national level through liaison with the ABA Task Force.

The Commission has appropriately been charged with hearing testimony on the Bar's most recent proposal for preadmission lawyering skills. But it is by no means limited to this approach for assuring the competence of California practitioners. It should provide a means through which educators, practitioners, and others can exchange information about existing methods for lawyering skills training and explore new methods. Among other things, I hope that the Commission will determine the scope of the problem (for example, What are the most pervasive deficiencies in lawyering skills?), the varieties of on-the-job training available to practicing lawyers, and developments in skills training within law schools.

I imagine—without prejudging the outcome of what promises to be a productive process of inquiry and deliberation-that the optimal solution will require that both law schools and the practicing bar assume more responsibility for assuring professional competence. In any event, I will keep you posted.

Update. On March 3, as we were going to press, the CBA Board of Governors appointed Dean Brest and Robin Paige Donoghue as co-chairs of the new joint Commission on Lawyering Skills.-ED.

#### PAYING FOR AIDS

Continued from page 13

whose infection has progressed to AIDS by the year 1992.)

Combining these estimates gives us a reasonable and somewhat reassuring guess at the upper limits of HIV-related treatment costs in 1992: about \$8.25 billion. Although that is a significant amount of money, it would be just over one percent of the \$770 billion we are likely to spend on health care in that year. Overall, the United States can "afford" to provide good medical care to HIV-infected patients.

The United States overall, however, does not pay the tab. I have estimated that the costs of AIDS treatment will be paid largely by employers and insurers (about 35 percent) and hospitals and doctors (about 30 percent). Medicaid, funded by state and federal governments, will pay about 25 percent, while Medicare pays under 3 percent, and patients pay about 5 percent. Although I have just begun to study pre-AIDS costs, it seems likely that providers, Medicaid, and Medicare will all bear lower shares, while insurers and patients will pay relatively more.

#### Three Points of Stress

Our pluralistic system for financing health care has some advantages in diversity and innovation. It also has one enormous disadvantage: When funds are scarce, each part of the system has an incentive to lower its own costs by pushing those costs to someone else. Those parts that cannot or will not jettison their costly patients suffer. As this happens with HIV-infected patients, it will cause several problems. The three most important concern employmentrelated health plans, public hospitals, and pre-AIDS treatment.

First, employment-related health coverage increasingly means self-insurancea trend that HIV may accelerate. Many state insurance commissions have refused to allow insurers to sell group policies that exclude coverage for AIDS. But ERISA (the federal Employee Retirement and Income Security Act) exempts self-insured health plans from state regulation without providing substantive constraints of its own.

Thus, a self-insured employer or union may limit or even eliminate coverage for AIDS-related costs. According to press reports, some already have. One Oregon car dealership amended its benefit plan to exclude all AIDS-related costs; a South Florida union capped its maximum AIDS payments at \$15,000, compared with a \$1 million cap for other expensive conditions. Pre-AIDS treatment costs can be sloughed even more easily, by expressly refusing to cover AZT or, more subtly, by imposing dollar limits on prescription drug coverage. From the employer's perspective, the result is reduced costs; from the public's perspective, HIV-infected patients are impoverished more quickly, state and federal Medicaid budgets are depleted faster, and providers that cover the poor, particularly public hospitals, are put under even greater strain.

This freedom for self-insured plans has troubling implications beyond AIDS. If employers learn to limit their exposure to HIV-related costs by restricting their selfinsurance benefits, what will prevent them from similarly containing other employee health costs? There are few legal barriers. Employee relations may present some barriers, but that may just mean that the diseases singled out for negative treatment will be diseases that affect retirees or unpopular groups of employees. Because employment-related coverage protects more people than any other financing

method, the consequences could be enor-

mous for the overall health care financing

system.

The second major stress will hit publicly owned hospitals. Hospitals and doctors will bear nearly 30 percent of the costs of HIV treatment in the form of unreimbursed or under-reimbursed care. Privately owned hospitals will try to compensate by raising their rates, thus spreading the uncovered costs of HIV care through the entire system. Public hospitals, which are usually owned by cities or counties, face special problems in this respect. These hospitals provide care for a disproportionate number of AIDS patients. When they lose money on these patients, they have few private patients on whom to shift the costs. Raising rates would only make the number of paying patients they attract dwindle even further.

The health of public hospitals is vital not only to AIDS patients, but to millions of other Americans. Except in emergency situations, private hospitals have no general obligation to care for those who need care but cannot afford it. In many states, public hospitals assume that responsibility. Long underfunded and understaffed, hospitals facing an increasing number of undercompensated AIDS cases may no longer be able to fulfill this mission-for AIDS patients or anyone else.

The third stress involves pre-AIDS treatment. One way or another, the health care system does treat people who are acutely ill-with AIDS or anything else. People seeking pre-AIDS treatment, who are often functionally healthy, have no such guarantee. Before a case of AIDS is diagnosed, those infected with HIV have no special eligibility for Medicaid. These patients will have to find the thousands of dollars a year needed for AZT or other treatments from other sources. Even those fortunate enough to be covered by private health plans may discover that much of their drug costs-the most expensive part of current pre-AIDS treatment-will not be covered. The health care financing system will increasingly face a bald choice: to expand to provide reasonably priced pre-AIDS treatment, or to accept that lives will be cut short for lack of funding.

#### **Band-Aid Solutions**

I have sketched some of the economic problems that AIDS costs will impose on the health care financing system. These problems will, in turn, generate political pressure. I believe HIV-related costs will not push the system into major structural changes, but they should trigger some specific reforms.

The federal government could limit the first problem-exclusion by self-insuring employers-through forbidding discrimination against AIDS in employee health plans. Although the self-insurance aspect of discrimination has not been widely noted, the principle of banning AIDS discrimination has broad support. As I write this, the Senate has passed and the House is considering the Americans with Disabilities Act, which has been hailed in part for banning discrimination against those infected with HIV. The version passed by the Senate, however, expressly authorizes employers to "classify" employees into different risk groups for health coverage purposes, without regard to the remainder of the Act.8 Further legislation appears necessary to prevent the erosion of employment-related coverage for AIDS or any other disease.

Some have put forward "high risk pools" as a solution to the lack of effective private coverage. These pools, similar in concept to "assigned risk" automobile liability plans, make subsidized health coverage available to those who are medically uninsurable for any reason. At least fifteen states have instituted such pools. Although a favorite solution of the insurance industry, high risk pools are unlikely to play a significant role in financing AIDS care. The

premiums are high, and only knowledgeable people with a good continuing income would enroll. Limited evidence from the first few states to institute risk pools seems to indicate that few eligible people actually join them.

The second problem—bankrupting public hospitals-could be dealt with directly through federal subsidies or by an increase in Medicaid reimbursement rates. The total state and local cost of AIDS care for public hospitals and Medicaid will be about \$1.7 billion in 1992. Shifting a large portion of those costs to the federal budget through some form of "disaster relief" would greatly relieve the stresses on public hospital systems. Economically, that's easy; politically, it may prove more difficult. The need will be greatest in urban, largely inner-city hospitals in New York, California, and Florida. Members of Congress from less affected regions may be unwilling to help those cities treat AIDS patients—patients who will still be mainly drug users and homosexual men.

The third problem—pre-AIDS treatment costs—may also require specific intervention. The federal government currently spends about \$30 million per year to subsidize AZT purchases for AIDS patients not eligible for the drug under Medicaid. One solution would be to expand that subsidy program; another would be to press for lower AZT prices, through market competition or political pressure. The political will again may be lacking, even though pre-AIDS treatment might reduce the total cost of treatment over time.

I expect Congress to adopt some combination of these limited measures. Others have argued that HIV-related costs require broader cures. Some have sought the total federalization of AIDS costs through the expansion of Medicare to all AIDS patients, similar to that provided in 1972 for kidney dialysis patients (the End-Stage Renal Disease or ESRD program). Others have urged that Medicare be expanded to cover all catastrophic illnesses, including AIDS. Finally, some analysts have contended that the costs of HIV-related care are a good reason to replace the health care financing system with some form of comprehensive national health insurance.

None of these broader reforms appears likely. The first proposal will founder on both the difficulty of singling out one expensive disease for special treatment and the unhappy fiscal results of the ESRD program. The second and third proposals face a double-edged problem with costs: The total medical costs of HIV, though

significant, are manageable; the costs of national insurance, either catastrophic or comprehensive, are politically unthinkable under current budget conditions.

#### **Looking Ahead**

The HIV epidemic has revealed much more about our current health care system than I can cover here. It has demonstrated the importance of caring and shown the limits of volunteerism. It has produced pathbreaking research and highlighted the difficulty of fitting basic science to urgent problems. It has given new force to alternatives to hospital-centered care and led to renewed concern about the proper use of intensive care units. It has made doctors and nurses face the personal risks of their chosen professions and renewed their awareness of their ethical obligations. And it has shown the powerful role of public politics in shaping public health.

But I think its most important lessons are for the health care financing system. HIV will not lead to the collapse of that system, but the epidemic does expose its crucial flaws. We will add new paint and plaster to the cracked walls and prop up the existing edifice with a few new supports, but the underlying flaws, like the San Andreas fault, will not go away. At some point in the next twenty years, I believe this fragmented system, with its ever increasing costs and its powerful incentives to avoid serving those in need, will collapse. I hope the lessons of the HIV epidemic can help us build a better replacement.

#### Footnotes

- 1. Greely, "AIDS and the American Health Care Financing System," 51 U. Pitt. L. Rev. 1 (Fall 1989); Greely, "AIDS and the U.S. Health Care Financing System," in SIDA: Contraintes économiques et politique de Santé (forthcoming 1989).
- 2. I am concerned in this article only with personal medical care costs—the medical costs of diagnosing and treating HIV infection. The costs of research, education, and blood supply protection, although part of total medical costs, are not tied to individual patients infected by HIV and are not considered here. They do, however, add several billion dollars to the annual total.
- 3. The most recent official projections are published in CDC, "Quarterly Report to the Domestic Policy Council on the Prevalence and Rate of Spread of HIV and

AIDS—United States," 37 Mortality and Morbidity Weekly Rep. 551 (1988). These projections have been strongly challenged as being too high. See Hay, Osmond, and Jacobson, "Projecting the Medical Costs of AIDS and ARC in the United States," 1 J. Acquired Immune Deficiency Syndromes 466 (1988).

- 4. There are two useful reviews of the literature on AIDS costs: Bloom and Carliner, "The Economic Impact of AIDS in the United States," 239 Science 604 (1988) and Sisk, "The Cost of AIDS: A Review of the Estimates," 6 Health Aff. 16 (1987). I think the two best projections of future costs are Hellinger, "Forecasting the Personal Medical Care Costs of AIDS from 1988 Through 1991," 103 Pub. Health Rep. 309 (1988), and Scitovsky and Rice, "Estimates of the Direct and Indirect Costs of Acquired Immunodeficiency Syndrome in the United States, 1985, 1986, and 1991," 102 Pub. Health Rep. 5 (1987).
- 5. Arno, Shenson, Siegl, Franks, and Lee, "Economic and Policy Implications of Early Intervention in HIV Diseases," 262 J.A.M.A. 1493 (Sept. 15, 1989).
- 6. CDC's December 1987 estimate, which was the same as its June 1986 estimate, is set out in CDC, "Human Immunodeficiency Virus Infection in the United States: A Review of Current Knowledge," 36 Mortality and Morbidity Weekly Rep. Supp. S-6 (1987). The case for a lower estimate is forcefully made in Osmond and Moss, "The Prevalence of HIV Infection in the United States: A Reappraisal of the Public Health Service Estimates," AIDS Clinical Review 1989 1 (ed. P. Volberding and M. Jacobson).
- 7. Institute of Medicine and National Academy of Sciences, Confronting AIDS: An Update 62-64 (1988), and Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic 123 (June 24, 1988).
- 8. § 501(c), S. 933, 101st Cong., 1st Sess. See 135 Cont. Rec. No. 112, S 10708 (Sept. 7, 1989).



Henry T. Greely served on the California AIDS Leadership Commission's Subcommittee on Finance and Delivery of Health Services and has written two scholarly articles on AIDS costs.<sup>1</sup>

He is also a member of the Stanford University Medical Center Committee on Ethics, and of the advisory board for the proposed Stanford Center for the Study of Bioethical Issues.

Popularly known as Hank, Greely joined the faculty in 1985 after four years (the last as a partner) with Tuttle & Taylor of Los Angeles. He had previously been in Washington, D.C., as a staff assistant to the U.S. Secretary of Energy (1979-1981) and as special assistant to the General Counsel of the Department of Defense (1979). A graduate of both Stanford (AB '74) and Yale (JD '77), he clerked for Judge John Minor Wisdom of the Fifth Circuit Court of Appeals (1977-78) and for Justice Potter Stewart of the U.S. Supreme Court (1978-79).

Greely's interest in health law is at least partly due to his marriage to physician Laura L. Butcher of Kaiser Permanente. His publications on health-related topics include "The Ethical Use of Human Fetal Tissue in Medicine" (New England Journal of Medicine, April 20, 1989) and "The Equality of Allocation by Lot" (Harvard Civics Review—Civil Liberties Law Review, 12:113, 1977). Greely also teaches in the areas of property, natural resources, and environmental law.

#### TAKEOVER BIDS

Continued from page 23

of the premium. In other words, arbitrageurs can only acquire shares when a company's long-term shareholders choose to sell them.

Although distaste for arbitrageurs still hangs heavy in the air, Management more recently has identified a new category of disfavored shareholder whose interests can be appropriately disregarded. The new villains are institutional shareholders who, like arbitrageurs, are said to be interested only in short-term profits.

It is puzzling why the fact that a majority of the shares of many major corporations are now held by institutional investors somehow entitles Management to ignore their interests. But puzzles aside, this justification founders on the same rock that sank the arbitrageur argument: the fact that the disfavored category of shareholder holds stock in a representative capacity. If the argument is that the managers of institutional investors are disregarding the best interests of their own beneficiaries, then a variety of legal protectionsrunning from simple fiduciary duty to ERISA-are available. The target company's management, two levels removed, is an unlikely source of additional protection.

The second paternalistic justification for allowing target Management to save shareholders from themselves rests on an empirical claim: that blocking an offer makes shareholders better off, because the value of the company's stock subsequently will appreciate by an amount in excess of the takeover premium. Put simply, the claim is that shareholders' wealth increases when Management defeats a hostile offer.

This was the pro-Management forces' favorite argument, because it could be framed in traditional terms: that Management was acting to maximize the value of the shareholders' investment. The problem was that the argument turned out to be empirically incorrect. Studies show that, with occasional exceptions, shareholders of a target company that remains independent after blocking an offer would have been significantly better off had the offer been accepted.

#### Through A Glass Darkly

As it became increasingly clear that paternalism did not make shareholders better off, Management turned instead to a group of justifications involving presumed benefits to the economy and society generally. Thus Management, in all its wisdom, should have the discretion to block a hostile offer even if doing so made its own shareholders worse off.

The most familiar of these justifications builds on the claim that takeovers result in short-term management which, in turn, has caused the United States to become less competitive internationally. Peter Drucker has been the leading exponent of the competitiveness justification (and it clearly has been the most popular story told by businessmen testifying at congressional hearings). As Drucker puts it, "A good many experienced business leaders I know now hold takeover fear to be a main cause of the decline in America's competitive strength in the world's economy ... It contributes to the obsession with the short term ...".4 We would as a whole be better off (even if shareholders were made worse off), if managers could block hostile takeovers. Then, the argument goes, they would feel secure enough to return to long-run management, which, after all, is what we really want them to do.

At one level, the short-term management justification is difficult to evaluate. The evidence offered in support fits what I have heard described as the lawyer's definition of data: the plural of anecdote. The syllogism runs like this. In the post-war period, the economies of Germany and Japan have done very well; hostile take-overs are not possible in these countries. In contrast, the United States has not done well economically; hostile takeovers are possible in the U.S. The conclusion, of course, is that if we allowed managers to block hostile takeovers, we would also do well economically.

Taking the argument on its face (and resisting the urge to dissect onedimensional cross-cultural analysis), this justification can be tested empirically with about as much analytic rigor as it embodies. A testable hypothesis would be: If takeovers are the cause of our international decline, those U.S. industries that have not experienced takeover pressure should be the most successful in meeting international competition. Our automobile industry, which has not experienced takeover pressure of any kind in the post-war period, would seem an apt test case. Yet, one would be hard pressed to find an industry that has been less successful in meeting foreign competition.

The second "damn the shareholders" justification builds on the proposition that Management owes a responsibility not

just to shareholders, but also to "stakeholders"—employees, local communities, suppliers and the like. The implication is that Management should have the power to block an offer favorable to shareholders if it would be unfavorable to the stakeholders.

Whether expressed in corporate charters or in recent state statutes, the stakeholder justification for blocking hostile takeovers seems disingenuous. The problem is that the justification gives Management the power to consider stakeholders' interests, but does not make them accountable if the stakeholders believe that their interests are given too little weight. Suppose Management declines an offer of \$23 a share on the basis of stakeholder interests, but then accepts the same offer raised to \$25. Unless stakeholders receive standing to challenge that decision, it is difficult to take Management's profession of concern for stakeholder interests very seriously.

Moreover, one cannot help being uneasy about a justification that is not evenhanded in its application. Management claims the right to block a takeover because, for example, the would-be acquirer would close plants. But stakeholders have precisely the same concern when a plant is closed by a company's original management. Yet we don't see Management supporting plant-closing legislation to protect stakeholders from its own actions.

The final entry in the social justification category also sacrifices shareholder interests to those of a larger group. The idea is that hostile takeovers are bad for the economy. Note that it is not takeovers in general that are disapproved, but only *hostile* takeovers. The premise seems to be that takeovers approved by Management are good for the economy, while takeovers rejected by Management are not.

I can understand wanting to identify ahead of time which acquisitions would have a positive and which a negative macroeconomic effect; and I can imagine, as a matter of public policy, that shareholders might have to take a back seat to general societal concerns. What I have difficulty understanding is why target Management is best equipped to separate socially good from socially bad acquisitions.

Indeed, the empirical evidence seems to run in precisely the opposite direction. Harvard Business School Professor Michael Porter studied the track record of 33 large U.S. companies' efforts to diversify over the period 1950 to 1986. He found that where the company entered an unrelated line of business by acquisition prior

to 1975, almost 75 percent of the acquisitions were subsequently divested.<sup>5</sup>

Commentators like John Smale, chairman and CEO of Procter & Gamble Co., have relied on Porter's data to argue that hostile takeovers are bad for the economy. The problem is that Smale gets it backwards. The overwhelming majority of pre-1975 acquisitions, especially by large companies of the sort that compose Porter's sample, were friendly, not hostile, acquisitions. Thus the Porter data show only that friendly acquisitions don't work. Indeed, in searching for a company that has successfully diversified by acquisition, Porter identifies Hanson Trust, a noted hostile acquirer.

#### The Real Justification

If the proffered justifications for giving target Management veto power do not withstand analysis, then what is the real justification? The short answer, I think, is Management entrenchment. However, I have in mind not the venal concept familiar in case law, where even independent directors are imagined to seek self-servingly to keep their positions (and egos) intact at shareholder expense.

Rather, what I imagine is at work is a deeply felt belief that a corporation is not an artificial entity which is the puppet of its shareholder owners, but rather a living, independent entity—like Pinocchio, a real boy—with critical social, political and economic roles to play.

It may come as a surprise to some that this organic view is associated in the United States with Adolph Berle, more widely recognized for emphasizing the impact on shareholders of the separation of ownership and control.<sup>8</sup> The modern corporation, in his words, is the "collective soul" and "conscience-carrier of 20th century American society."

If one sees the corporation in this way, the question of who runs such an important social institution transcends shareholder interest in the price of their stock. In my mind the often vigorous resistance by independent directors to hostile takeovers reflects their good-faith belief that large corporations run by operating management with the guidance of traditional directors will better serve society than corporations run by junk-bond-financed raiders like Carl Icahn, T. Boone Pickens, Jr., Asher Edelman, Saul Steinberg, or Samuel Heyman, regardless of whether current shareholders benefit.

So understood, the debate over the Just

Say No defense has both a judicial and a political side. The judicial side, which reflects traditional notions of corporate governance, should be quite inhospitable to arguments for Management veto power. For all of the reasons the litany of justifications fails, shareholders should be free to decide whether to accept or refuse a hostile offer.

There remain, however, larger issues concerning the allocation of political, social and economic power within a democracy. These are not the province of the courts. Political questions about the role of the corporation as an intermediate social force between government and the individual are appropriately directed at Congress, whose members are politically accountable. The best thing we as lawyers can do is ensure that we and the courts are clear on the difference.

#### Footnotes

- 1. TW Services, Inc., v. SWT Acquisition Corp., Civ. Action No. 10427 (Del. Ch., March 2, 1989), slip opinion at 17.
- Unocal Corp. v. Mesa Petroleum, 493
   A2d. 946 (Del. S. Ct. 1985).
- 3. See, e.g., D. Kennedy, "Distributive and Paternalistic Motives in Contract and Tort Law, with Special Reference to Compulsory Terms and Unequal Bargaining Power," 41 Md. L. Rev. 563 (1982).
- 4. P. Drucker, "Taming the Corporate Takeover," *Wall Street Journal*, Oct. 30, 1984, p. 30.
- 5. M. Porter, "From Competitive Advantage to Corporate Strategy," *Harvard Business Review*, May-June 1987, p. 43.
- 6. J. Smale, "What About Shareowners' Responsibility?" Wall Street Journal, Oct. 16, 1987, p. 28.
- 7. See, e.g., Hanson Trust PLC, HSCM v. ML SCM Acquisition, Inc., 781 F.2d 264 (2d Cir. 1986).
- 8. See R. Romano, "Metapolitics and Corporate Law Reform," 36 Stan. Law Rev. 923, 936 (1984).
- 9. A. Berle, The Twentieth Century Capitalist Revolution (1954), p. 182-83.



Professor Gilson is the author of The Law and Finance of Corporate Acquisitions (Foundation Press, 1987) and a Reporter of the American Law Institute's Corporate Governance

Project. A member of the Stanford Law faculty since 1979, he directs the Law and Business Program.

This text was adapted from Gilson's "Just Say No to Whom?"—an article first published in Legal Times (June 26, 1989, page 19).

#### HISPANIC GRADS

Continued from page 21

unclear, because title originated with the Spanish monarchy," Romero explained. "From there it must be traced to the present, through the American occupation and subsequent annexation of the area. The fact that New Mexico was subject to land grants is not unique; what is unique is that the land grant borders are still significant—they play a part in defining the property lines and the people's own sense of rootedness."

Dennis's experience as a practicing attorney tells him that, "It's important not to be railroaded into choosing between a public interest practice and a private practice. There is a lot more out there. My practice, while a business, is also as public-interest oriented as public interest law itself. The kind of law I do provides a forum for addressing and correcting wrongs against individuals."

Dennis, like many New Mexicans, is an avid outdoorsman and conservationist. He enjoys part-time farming and ranching, and is currently engaged in rejuvenating an ancient apple orchard. "Some of the trees are 100 to 150 years old and may be varieties that no longer exist anywhere else," he explained. "I'm trying to get them producing again, through the grafting process, so that I can replenish the whole orchard with the rare stock."

Clearly pleased to be where he is, he added: "Living here, I can literally ski in the morning and be back at my office in the afternoon. I play soccer in Santa Fe. And I can kayak, backpack, and climb mountain peaks."

His moment of decision came, Dennis recalls, after his second year of law school. "I was flying from D.C. to Los Angeles to spend the second half of the summer at a Los Angeles firm. "The plane flew over the Rocky Mountains. It was a pristine day. I saw the peaks, the valleys, and the glaciers, and I asked myself: 'What am I doing? I could be the greatest lawyer in L.A. or D.C. and still not have the quality of life that I could have back home.'

"Facing the challenges of life is a lot like kayaking," Romero concluded. "There is a sense of working with the power of the river. When you're as close to the water as you are in a kayak, you realize that the river is a living, moving, powerful force. You find that you'll never conquer the river; you

# Alumni/se CATHERINGS

RADUATES from ten classes, ranging from 1934 to 1984, renewed friendships at reunion parties during the 1989 Alumni/ae Weekend, November 3-4. They and graduates from other classes also enjoyed a full round of general activities beginning at twilight Friday with an all-alumni/ae reception chez Paul and Iris Brest, and ending Saturday evening with the annual Alumni/ae Dinner Dance. In between, there was a varied program of classroom presentations, a tailgate buffet, and a rousing Stanford-UCLA gridiron battle from which the Cardinal emerged victorious.

The classroom segment began with a "View from the Bench" by a panel of alumni/ae jurists. Chaired by William A. Norris '54 of the U.S. Court of Appeals for the Ninth Circuit, they were: LaDoris H. Cordell '74, Santa Clara County Superior Court; Thomas A. Harris '64, Fresno County Superior Court; Lee Johnson '59, Oregon Circuit Court, Fourth District; Charles A. Legge '54, U.S. District Court, Northern District of California; Pamela Ann Rymer '64 (of whom more on page 64), U.S. Court of Appeals, Ninth Circuit; John H. Sutter '54, Alameda County Superior Court; and Thomas Kongsgaard '49, recently retired from the Napa County Superior Court.

Judges from virtually all jurisdictions reported that caseloads were becoming burdensome, with drug crimes, family breakdown, and sentencing guidelines cited as contributory causes. "We're overloaded and underpaid," said Norris. Nonetheless, he concluded, "We love it and recommend it as a career."

There followed a penetrating analysis by banking expert Kenneth E. Scott '56 (the School's Ralph M. Parsons Professor) of the thrift institution debacle that led to "the largest disaster program in the history of this coun-





Award of Merit. The recipient: Judge Stanley A. Weigel '28, for (in the Dean's words) "your commitment to the rule of law in its deepest sense, your passion for justice, your courage and integrity, and the standards of excellence you have set as attorney and judge." The venerable jurist, a member since 1962 of the U.S. District Court for the Northern District of California (see page 50), was joined at this happy event by his wife, Anne, and a tableful of proud relatives.

The annual dinner, concluded, as is customary, with general conversation and dancing. Plans for the 1990 Alumni/ae Weekend, including reunions for classes graduating in the years ending with -5 or -0, are now being laid. Mark your calendars for Friday and Saturday, September 21–22.

The 1989 American Bar Association annual meeting in Honolulu last August was the occasion for a Stanford Law reception attended by some 85 alumni/ae. Professor Ronald Gilson spoke about "The New Business and Legal Profession Curricula at Stanford Law School." The Kahala Hilton event also marked the debut, as a member of the faculty, of SEC Commissioner Joseph Grundfest '78 (see page 29).

Dean Paul Brest traveled to San Diego in September for the 1989 California State Bar convention. While there, he provided alumni/ae at the School's traditional CBA luncheon with an update on the state of the School.

The previous July, back at Crown Quad, the Dean sponsored a "study break" for bleary-eyed graduates participating in the on-campus Bar review course. The event, like its 1988 predecessor, took the form of a buffet lunch in Crocker Garden. Several members of the faculty and staff also brought an encouraging word. And the skies were not cloudy all day.

Bar break: These and many other recent grads found respite at the School-sponsored luncheon.



# **LETTERS**

#### WOMEN IN LAW FIRMS

Thanks for your excellent article on the "female brain drain" ["Endangered Species," by Louise LaMothe '71, Spring/Summer 1989]. It is the best I have seen on the subject.

> Robin Paige Donoghue State bar governor San Francisco

Bravo!... By personal choice, and finally by economic necessity, the vast majority of women will soon be in the workplace to support themselves and their families. That means the workplace must change to accommodate the universal needs of all workers to care for children, aging parents, and themselves better than we're doing now. I think we women will have fathers with working wives marching right along with us to force a shorter work week.

Hon. Laura Palmer Hammes '71 Superior court judge San Diego

I read your article with great interest and thought it was terrific. Having been married to an attorney, I am personally well aware of the pressures large firm practices, or similar practices, can put on a woman and a relationship.

> Tower C. Snow, Jr. Law firm partner San Francisco

One of our associates circulated your article, which deals with many issues weighing heavily on my mind. It is very difficult to explain to men the tremendous pressures on young women who attempt to have families and careers.

I recently broached the subject of an infant day-care facility on site. It seems to me that if we could give substantial help to young women (both lawyers and staff) when they start back to work, that would be a valuable contribution to their success and at the same

time one that the law firm could make realistically. We will see if we can get it off the ground.

> Lois W. Abraham (AB '55) Law firm partner Palo Alto

An excellent article. My boss has just opened a child care center in our building, the first of its kind in our city. What a battle she had getting all the appropriate approvals! But these things can be done.

Kimberly A. Reiley Trial deputy San Francisco

#### THE SILVER MEDAL

I was pleased to learn about your award from CASE [Council for Advancement and Support of Education]. It is well deserved.

> Kendyl K. Monroe '60 New York City

Thank you. Another honor has come our way from the editors of Print magazine, which cited a feature spread — "Banks in Trouble" (Spring 1988, pages 14–15) — for design excellence. The two-page spread, which was reproduced in Print's 1989 regional design annual, was the work of artist-designer Barbara Mendelsohn. — ED.

The entire last issue was just simply outstanding.

Richard E. Ryan '34 Los Altos, California

Readers are encouraged to comment on and critique the contents of this magazine. Letters selected for publication may be edited for length. Published or not, all communications will be read with interest. Please direct letters to: Editor, Stanford Lawyer, Stanford Law School, Stanford, CA 94305-8610.



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